

## **Title 8**

### **HEALTH AND SAFETY**

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## **Chapter 8.04**

### **ALARM SYSTEMS**

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#### **8.04.010 Purpose.**

The purpose of this chapter is to set forth regulations governing burglary, robbery and fire alarm systems, businesses and agents within the city, to require permits therefor, to establish fees and to provide for punishment of violation of provisions of this chapter. (Ord. 465 § 1, 1981)

#### **8.04.020 Definitions.**

As used in this chapter, the words and phrases set forth in this section shall mean as follows:

A. “Alarm agent” means any person who is employed by an alarm business, either directly or indirectly, whose duties include any of the following: selling, maintaining, leasing, servicing, repairing, altering, replacing, moving or installing on or in any building, structure or facility, any alarm system. Exemption: the provisions of this sub-section do not include a person who engages in the manufacture or sale of an alarm system from a fixed location and who neither visits the location where the alarm system is to be installed, nor designs the scheme for physical location and installation of the alarm system in a specified location.

B. “Alarm business” means the business by any individual, partnership, corporation or other entity of: selling, leasing, maintaining, servicing, repairing, altering, replacing, moving or installing any alarm system or causing to be sold, leased, maintained, serviced, repaired, altered, replaced, moved or installed, any alarm system in or on any building, structure or facility.

C. “Alarm system” means any set of mechanical or electrical devices or instruments designed for the detection of an unauthorized entry on the premises, unlawful act, fire or any emergency that alerts a municipal organization of its commission or occurrence and when actuated gives a signal, either visual, audible or both or transmits or causes to be transmitted a signal.

D. “Applicant” means a person, firm or corporation who or which files an application for a new or renewal permit as provided in this chapter.

E. “Audible alarm” or “local alarm” means a device designed for the detection of unauthorized entry on premises or of a fire on the premises which generates an audible sound on the premises when it is actuated.

F. "Automatic dialer unit" or "dialer unit" refers to an alarm which automatically sends over regular telephone lines by direct connector or otherwise, a prerecorded voice message indicating the existence of the emergency situation that the alarm system is designed to detect.

G. "Commercial building" means all structures whose primary use is not as a dwelling and more than fifty percent of the floor space is not used as a dwelling.

H. "False alarms" means any activation of an alarm not caused by or as a result of a criminal act, unauthorized entry or fire, except for activation for testing purposes when the police department has been given advance notice of such testing, or activation caused by the police department.

I. "False holdup alarm" means any signal which indicates a robbery or holdup to which police respond, which is not the result of a holdup or robbery.

J. "Notice" means written notice, given by personal service upon the addressee, or given by the United States mail, addressed to the person to be notified at his last known address. Service of such notice shall be effective upon the completion of personal service, or upon the placing of the same in the custody of the United States Postal Service.

K. "Primary and secondary trunk lines" means the telephone lines leading into the police or fire departments, either directly or indirectly, and used for emergency and nonemergency telephone calls on a person-to-person basis.

L. "Proprietor alarm" means any alarm or alarm system which is not leased or rented from, or owned or maintained and monitored by an alarm business. (Ord. 465 § 2, 1981)

#### **8.04.030 Permits.**

A. A permit shall be required for each alarm system, electronic or audible, on any commercial or residential premises within the city and a permit will be required for each alarm business and alarm agent doing business within the city on the effective date of the ordinance codified in this chapter or installed after such effective date.

B. Time to Acquire. All alarm system users shall, within ten days of completion of installation of a new alarm system or within ten days of the placing in service of an existing alarm system, obtain an alarm system users permit from the Police Department. (Ord. 810 § 1, 2002)

C. Fees. Each alarm system (business) shall pay a fee for a permit in the sum of thirty dollars per year, each alarm system (residential) shall pay a fee for a permit of ten dollars per year. (Ord. 810 § 1, 2002)

D. Expiration Date. All permits will expire on December 31st of each year.

E. Permits issued are nontransferable from one business to another or from one person to another. (Ord. 548 § 1, 1988; Ord. 465 § 3, 1981; Ord. 810 § 1, 2002)

#### **8.04.040 Applications.**

A. The issuing authority shall be the police or fire chief of the city.

B. Permit applications for any alarm system, alarm business or alarm agent shall be filed with the city clerk on a form prescribed by the chief of police. The police or fire chief shall require such information as is necessary to evaluate and act upon the application.

C. An applicant for an alarm agent permit who is the holder of a valid security guard registration certificate issued pursuant to the

provisions of Title 32, Chapter 26, Article 3, Arizona Revised Statutes, shall not be required to complete an application form and shall be issued a permit if he or she is otherwise qualified pursuant to this section.

D. A copy of the alarm business permit shall be at all times physically upon the subscriber's premises and shall be available for inspection by the police or fire department. (Ord. 465 § 4 (part), 1981)

#### **8.04.050 Duties.**

A. It shall be the duty of each alarm business or agent to assure that each alarm system installed or serviced by them is in proper working order and is installed or serviced according to the regular custom and practice of their trade. They shall give adequate instructions to business and residential customers on the use and operation of each alarm system installed or serviced by them. They shall also abide by any rules, regulations or procedures of the police or fire department which are adopted by resolution of the city council.

B. It shall be the duty of each person or business owning an alarm system within the city to assure that their alarm system, audible or electronic, is in proper working order at all times. They shall also abide by any rules, regulations or procedures of the police or fire department which are adopted by resolution of the city council. (Ord. 465 § 4 (part), 1981)

#### **8.04.060 Requirements.**

A. No person shall engage in, conduct or carry on an alarm business without first applying for and receiving an alarm business permit in accordance with the provisions of this chapter.

B. No person shall engage in, conduct or operate as an alarm agent without first applying for and receiving an alarm agent permit in accordance with the provisions of this chapter.

C. No person or business shall have or operate an alarm system on their premises without first applying for and receiving an alarm system permit in accordance with the provisions of this chapter.

D. Each alarm agent shall carry on his person at all times while so employed a valid alarm permit and shall display the same to any police officer upon request.

E. If an alarm agent terminates his employment with an alarm business, except as provided in subsection F of this section, such permit shall be surrendered to such alarm business and within five days thereafter it shall be mailed or delivered by the alarm business to the city clerk for cancellation.

F. If an alarm agent terminates his employment with an alarm business for the purpose of transferring employment to another alarm business permittee, he shall surrender his permit as provided in subsection E of this section and shall advise the city clerk who shall issue him a temporary permit until such time as a new permit is issued to him.

G. The owner of a proprietor alarm shall maintain the alarm or alarm system in good working order and take reasonable measures to prevent the occurrence of false alarms.

H. All persons or businesses having audible alarms must have some type of device attached to the alarm that will automatically shut the alarm off, or must have some other sure means of turning the alarm off within thirty minutes after the alarm has been activated. (Ord. 465 § 4 (part), 1981; Ord. 810 § 1, 2002)

#### **8.04.080 Prohibitions.**

A. It is unlawful for any person to engage in, conduct or carry on an alarm business without first applying for and receiving a permit therefor in accordance with the provisions of this chapter.

B. It is unlawful for any person to engage in, represent himself to be, or operate as an alarm agent without first applying for and receiving a permit therefor in accordance with the provisions of this chapter.

C. No person shall use, possess or install any alarm system, audible or electronic, in any commercial or residential building without having a permit in accordance with the provisions of this chapter.

D. No person owning, using or possessing any alarm system shall cause or permit the giving of more than three false alarms, whether intentional, accidental or otherwise within a twelve-month period.

E. Automatic dialing systems are prohibited from terminating or being keyed to primary or secondary trunk lines of the police or fire departments of the city. (Ord. 465 § 5, 1981)

#### **8.04.090 Suspension, revocation and/or denial.**

A. The following shall constitute grounds for suspension, revocation and/or denial of a permit by the chief of police:

1. The violation of any of the provisions of this chapter or regulations adopted by the chief of police;

2. Where an alarm system actuates excessive false alarms and thereby constitutes a public nuisance;

3. Where the applicant or permittee, his employee or agent has knowingly made any

false, misleading or fraudulent statement of a material fact in the application for a permit, or in any report or record required to be filed with any city agency.

B. If a permit is suspended, revoked and/or denied by the police or fire chief, a person can reapply for a permit after curing any defects in the application or any defects in the alarm system which caused the suspension, revocation and/or denial initially. Such person shall furnish such proof as the police or fire chief deems necessary to assure that the defects have in fact been cured. (Ord. 465 § 6, 1981)

#### **8.04.100 Exemptions.**

The provisions of this chapter are not applicable to audible alarms affixed to automobiles or to single unit smoke detectors which alert only the user and do not require special wiring. (Ord. 465 § 7, 1981)

#### **8.04.110 False alarms—Assessment schedule.**

A. Any alarm system which has three or more false alarms within a calendar year shall be subject to assessment as provided herein.

B. If the police or fire department records three or more false alarms within a calendar year for any alarm system:

1. The police or fire chief or his designee shall notify the alarm business holding the alarm business permit, or in the case of a proprietor alarm, the proprietor or alarm owner, by mail of such fact and direct that a report be submitted to the chief of police within fifteen days of receipt of the notice describing actions to be taken or which have been taken to discover and eliminate the cause of the false alarms. The notice shall contain the dates and circumstances surrounding each of the alleged

false alarms. The alarm business, or in the case of a proprietor alarm, the proprietor alarm owner, may challenge the determination of “false alarm” made by the chief of police instead of reporting as required herein. The notice shall also state that any further “false alarms” will also be subject to assessment as contained in Section 8.04.080.

2. If the alarm business, or in case of a proprietor alarm, the proprietor alarm owner submits the report required by subdivision 1 of this subsection, the chief of police or his designee shall determine if the action taken or to be taken will substantially reduce the likelihood of false alarms. If he determines that the action will substantially reduce the likelihood of false alarms, he shall notify the alarm business permittee, or in the case of a proprietor alarm, the proprietor alarm owner in writing that no assessment will be made at that time.

3. If the action outlined in subdivision 2 of this subsection is taken and no assessment is levied at that time, the alarm business, or owner of the proprietor alarm system which was the subject matter of the action, will be subject to the assessment procedure established by subdivision 5 of this subsection on the next false alarm signal emitted by that system and recorded by the police department.

4. If no report is submitted, or if the chief of police determines that the action which has been taken or is to be taken, will not substantially reduce the likelihood of false alarms, the chief of police or his designee shall give notice by mail to the alarm business permittee, or in the case of a proprietor alarm, the proprietor alarm owner, that the alarm business license, or proprietor alarm owner, will be assessed pursuant to subdivision 5 of this subsection.

5. Assessments imposed pursuant to this chapter shall be determined according to the following schedule for false alarms occurring during a calendar year:

<b>False Alarms</b>	<b>Penalty</b>
1—2	No fee - warning letter
3—4	\$20.00 - one time charge
5th	\$25.00
6th	\$30.00
7th	\$35.00
8th	\$40.00
9th	\$50.00
10th	\$75.00
11—12	\$100.00
12th	One time & letter of intent to revoke
13th	Revocation of permit, removal of alarm

6. Proof that a false alarm was caused by an act of God or by the actions of the telephone company shall constitute affirmative defenses to assessment for the particular false alarm.

7. Upon notice of the final determination pursuant to subdivisions 4 or 5 of this subsection of an assessment owing or order of assessment, the responsible party shall tender the fee assessed within ten days of the date ordered, or discontinue operation of the alarm system having the excessive false alarms. In the event the operation of such alarm system is not discontinued, and the assessment not tendered, it is declared to be, and is, a public nuisance which may be abated by order of a court of competent jurisdiction and its continued operation is unlawful and it is declared to be in violation of this chapter thereby subjecting such person or business to the penalties of Section 8.04.170.

C. Grace Period. Newly installed alarm systems shall not be subject to the penalties prescribed in this section for sixty days after the system becomes operational. (Ord. 548 § 2, 1988; Ord. 465 § 8, 1981)

**8.04.120 Limitations of liability.**

The city shall be under no duty or obligation to a permittee or to any other person affected by any provision of this chapter, including but not limited to any defects in any alarm system, or any delays in transmission or responses to any alarm. (Ord. 465 § 10 (part), 1981)

**8.04.130 Installation, maintenance and removal fees.**

All installation, removal or maintenance fees shall be paid by the applicant. (Ord. 465 § 10 (part), 1981)

**8.04.140 Removal of nonconforming device.**

In addition to any other remedy provided by law the chief of police may, whenever he shall have knowledge of the use of any device or attachment not operated or maintained in accordance with the provisions of this chapter, order the removal of such device or attachment. (Ord. 465 § 10 (part), 1981)

**8.04.150 Information to be confidential.**

The information furnished and secured pursuant to this chapter shall be confidential and shall not be subject to public inspection. (Ord. 465 § 10 (part), 1981)

**8.04.160 Fire alarms.**

It is provided that the city manager, or his designee will have full authority to enforce all sections of this chapter as pertains to fire alarm systems. (Ord. 465 § 11, 1981; Ord. 810 § 1, 2002)

**8.04.170 Violation—Penalty.**

A. Any person, firm, company or corporation, willfully violating any of the provisions of this chapter, shall be guilty of a petty offense. A person shall be subject to a fine of up to three hundred dollars and a business shall be subject to a fine of up to one thousand dollars. Each day that a violation continues shall be a separate offense punishable as hereinabove described.

B. The conviction or punishment of any person for violation of the provisions of this chapter or for failing to secure a permit as required by this chapter shall not relieve such persons from paying the permit fee due and unpaid at the time of such conviction, nor shall payment of any permit fee prevent criminal prosecution for violation of any of the provisions of this chapter. All remedies shall be cumulative and the use of one or more remedies by the city shall not bar the use of any other remedy for the purpose of enforcing the provisions of this chapter. The amount of any permit fee shall be deemed a debt to the city. An action may be commenced in the name of the city in any court of competent jurisdiction for the amount of any delinquent permit fee. All permit fees shall be deemed delinquent thirty days after they are due and payable. (Ord. 465 § 9, 1981)

## **Chapter 8.08**

### **FIRE PREVENTION CODE**

#### **Sections:**

- 8.08.010 Adoption.**
- 8.08.020 Adoption of Life Safety Code 101.**
- 8.08.030 Definitions.**
- 8.08.040 Enforcement.**
- 8.08.050 Amendments.**
- 8.08.060 Modification.**
- 8.08.070 Appeals.**
- 8.08.080 New materials, processes and occupancies requiring permits.**
- 8.08.090 False alarms.**
- 8.08.100 Restrictions on deliveries of flammable or combustible liquids.**
- 8.08.110 Violation—Penalty.**

#### **8.08.010 Adoption.**

That certain code entitled the Fire Protection Code, 1998 National Fire Protection Association codes (NFPA) and 1997 Uniform Fire Code (UFC) prepared and recommended by the American Insurance Association, and excepting such sections or portions as are hereinafter deleted, modified or amended, is adopted as the fire prevention code of the city and made a part of this chapter as though such code was specifically set forth in full herein. At least three copies of such code are on file and of record in the office of the city clerk and are available for public use and inspection. (Ord. 824 § 1, 2003; Ord. 430 § 2, 1979)

#### **8.08.020 Adoption of Life Safety Code 101.**

That certain code entitled “Life Safety Code 101,” of the NFPA, 1998 Edition, prepared and recommended by the National Fire Protection Association, except for such portions as are hereinafter deleted, modified and amended, is incorporated into the aforesaid fire prevention code of the city, as a separate independent and severable portion thereof, and is made a part of this chapter as though the Life Safety Code 101 was specifically set forth in full herein. At least three copies of such code are on file and of record at the office of the city clerk and are available for public use and inspection. (Ord. 824 § 1, 2003; Ord. 430 § 3, 1979)

#### **8.08.030 Definitions.**

A. Whenever the word “municipality” is used in the Fire Prevention Code and Life Safety Code 101, it shall be held to mean the city of Douglas, Arizona.

B. Whenever the Fire Prevention Code and the Life Safety Code refer to the jurisdictional limits established by law, those limits shall be the corporate boundaries of the city of Douglas, Arizona. (Ord. 430 § 4, 1979)

C. Whenever “hazardous material” is used in this chapter, it shall mean “a substance (gas, liquid or solid) capable of creating harm to people, the environment and property.” (Ord. 824 § 1, 2003)

#### **8.08.040 Enforcement.**

The Fire Prevention Code and Life Safety Code 101 adopted by this chapter shall be enforced by the fire chief through the fire department of the city and such enforcement shall be under the direct control and



supervision of the fire chief and his duly designated officers. (Ord. 443 § 1, 1979)

#### **8.08.050 Amendments.**

The Fire Prevention Code, 1998 Edition, of the American Insurance Association, is amended and changed in the following particulars:

##### **A. Vehicles Transporting Hazardous Substances.**

All vehicles transporting hazardous substances are restricted to commercial motor vehicle routes as established in Section 10.32.020 (A) of the Douglas Municipal Code.

##### **B. Prohibited Use of Liquified Petroleum Gas (LPG) Tanks.**

No LPG tanks shall be allowed for residential homes, mobile homes, commercial buildings or permanent facilities within the City limits.

##### **C. Permissible Uses of LPG Tanks.**

1. Permissible uses of LPG tanks shall be when used for travel trailers, campers, motor homes, motor vehicle fuel tanks, gas grills (5 gal max.), licensed mobile vendors (25 gal max.) , and hot tar roofing contractors with a City permit.

2. Permits shall be required for Hot Tar Contractors using LPG tanks for roofing. Permit shall be issued by the Fire Department annually for each calendar year to contractors who are certified as hot tar contractors by the Arizona Builders Association. A fee of \$25.00 shall be charged for issuance of the permit.

(a) Any person

firm, company or corporation found in violation of 8.08.050 subsection C subpart 2 shall be fined \$100.00 for each day of the violation.

##### **D. Requirements for Authorized LPG Distributors.**

1. Authorized LPG distributors subject to state license requirements shall comply with the following minimum distance requirements to buildings, property lines and between containers:

<b>Capacity to Gallons</b>	<b>Above ground</b>	<b>Between Containers</b>
Less than 125 gals.	0 feet	0 feet
125 to 250 gals.	10 feet	0 feet
251 to 500 gals.	10 feet	3 feet
501 to 1,200 gals.	25 feet	3 feet
Over 1,200 gals.	50 feet	5 feet

NOTE: At the discretion of the the fire chief or his designee, container location may be altered after consideration of special hazard features involved. Also, containers may be located at a lesser distance to buildings of not less than two hour fire resistive construction in accordance with the building code, provided the above distances applied to openings in buildings are maintained except that the discharge from the safety relief valves on containers of less than 125 gals. must be into the open air and not terminate against or under any building or in the direction of means of egress, the discharge opening shall be at least five feet away from any opening into a building. These containers must be firmly secured.

2. LOCATION OF AUTHORIZED DISTRIBUTORS. When an LPG storage tank is used to fill portable or automobile LPG tanks, the distribution point shall be located as follows:

- 1) **10 ft. from** buildings with min. 1 hr. exterior walls.
- 2) **25 ft. from** buildings with combustible exterior walls.
- 3) **25 ft. from** line of adjoining property that may be built upon.
- 4) **50 ft. from** outdoor places of assembly.
- 5) **10 ft. from** public right-of-ways.
- 6) **5 ft. from** driveways.
- 7) **10 ft. from** other combustible containers.

3. PROTECTION AGAINST VEHICLE DAMAGE. All containers must be mounted on concrete pads, and protected from vehicle collision. Containers used for refueling motor vehicles, including forklifts, must be situated so that vehicles cannot drive closer than 10 ft. to the container.

4. LOCATION OF CONTAINER FROM FUEL TANK. Containers shall not be located within 20 ft. of an aboveground fuel tank other than LPG or within 15 ft. of a dispenser for an underground fuel tank (example: gas station).

5. DISTANCE FROM RELIEF VALVES. Direct fired relief valves of any capacity shall be located no less than:

- a) 20 ft. from the container.
- b) 20 ft. from the shutoff valves.
- c) 20 ft. from the point of disbursement.
- d) 25 ft. from the buildings.

6. POSTING REQUIREMENTS. Operating, filling and safety instructions supplied by the manufacturer or distributor shall be kept posted on or in the immediate vicinity of all LPG tanks. Tanks shall be labeled as containing "liquefied petroleum

gas." Tanks may be labeled with the proprietary name. "No Smoking" signs shall be posted in the immediate vicinity.

7. SECURITY REQUIREMENTS. LPG containers shall be protected from unauthorized operation by a six-foot industrial fence or other means approved by the fire chief or his designee.

8. FIRE EXTINGUISHER REQUIREMENTS. Installations where LPG is dispensed must be provided with a minimum of one fire extinguisher with a minimum classification of 20 B.C. extinguishers shall not be mounted further than 50 ft. from an LPG container.

9. LOCATION FROM SIDEWALKS. No stationary storage tank shall be less than 10 ft. from the nearest street line or sidewalk.

10. ELECTRICAL EQUIPMENT OR INSTALLATIONS. All electrical equipment or installations within five ft. of the following shall be Class I, Division I, Group "D" (Article 501 of the National Fire Protection Association, Electrical Code, 1998), and if more than five ft. but less than 15 ft. from the following shall be Class I, Division II, Group "D" (Article 501 of the National Fire Protection Association, Electrical Code, 1998):

- a) Tank vehicle loading and unloading points;
- b) Relief valves;
- c) Pumps;
- d) Connections;
- e) Compressors;
- f) Gas air mixers and vaporizers other than direct fired vaporizers.

11. REQUIREMENTS FOR LARGE LIQUEFIED PETROLEUM GAS INSTALLATION SYSTEMS.

a. **Large LPG Installations Defined.** The storage, in one location, of liquefied petroleum

gas (LPG) in single or multiple containers totaling over 1,000 gallon water capacity.

b. **Installation Location.** Large LPG installations shall be limited to areas zoned for industrial use.

c. **Installation Security.** Large LPG installations shall be protected by a six-foot industrial fence or other means approved by the fire chief or his designee. In addition, adequate protection against damage by vehicles shall be provided.

d. **Water Spray System Required.** Large LPG installations, including associated tank truck or rail tank car loading and unloading points, shall be protected by a water spray system that will provide the minimum water requirements to the top, side and bottom of LPG containers. In addition:

1) Plans shall be furnished to the fire chief or his designee and a permit obtained for each water spray system.

2) All water spray systems shall have an automatic water flow alarm signal monitored at a location approved by the fire chief or his designee.

3) All water spray systems shall be automatic with a manual override and comply with NFPA 13, 1998, as shall all maintenance requirements on the system.

4) Footings or foundations for containers in large LPG installations with water spray systems must be able to withstand the effects of wetting from the water spray system and fire hose streams as determined by a registered engineer. Drainage shall be provided by one of the methods recommended in NFPA 13, 1998.

**12. TRANSFER OPERATIONS.** When LPG is transferred from or to a delivery vehicle, a person qualified by the LPG manufacturer or distributor to operate the

transfer system and familiar with its fire safety devices shall be in constant attendance.

**13. RESTRICTION ON SIZE, ROUTE AND TIMES OF DELIVERY OF LPG VEHICLES.**

(a) Vehicles delivering LPG to installations within the corporate limits of the city are limited to 4,000 gallons water capacity.

(b) Bulk tank vehicles exceeding 4,000 gallons water capacity supplying bulk business outside the city limits, shall stay on the designated commercial truck routes pursuant to DMC 10.32.020 (A). Residential deliveries to locations outside the city limits are limited to day light hours.

**14. ADDITIONAL REQUIREMENTS.** In addition to these specific fire control requirements, the installation and maintenance of LPG installations or systems shall comply with the requirements of NFPA 58, Liquefied Petroleum Gas Code, 1998 Edition.

**15. UNDERGROUND INSTALLATIONS.** The storage of LPG underground containers shall be prohibited within the corporate limits of the City of Douglas.

**E. Incinerators.** Rubbish rooms inside of buildings must be of two hour fire-resistive construction unless automatic sprinklers are provided with one hour fire-resistive construction.  
(Ord. 824 § 1, 2003; Ord. 460 § 2, 1980; Ord. 430 § 6, 1979)

#### **8.08.060 Modification.**

The fire chief shall have the authority to modify the enforcement of any of the provisions of the Fire Prevention Code adopted by this chapter upon application in writing by the

owner or lessee or his/her duly authorized agent, when there are practical difficulties in the absolute enforcement and/or compliance with this chapter and the code hereby adopted; provided, however, that the spirit of the code shall be observed, public safety secured and substantial justice done. The particulars of such modification when granted or allowed and the decision of the fire chief thereon, shall be entered upon the records of the fire department and a signed copy furnished the applicant. (Ord. 443 § 2, 1979)

#### **8.08.070 Appeals.**

Whenever the fire chief shall disapprove an application or refuse to grant a license or permit applied for or when it is claimed that the provisions of the Fire Prevention Code as hereby adopted or as may hereafter be amended, do not apply or that the true intent and meaning of the code has been misconstrued or wrongfully interpreted, the applicant may appeal from the decision of the fire chief, in writing, to the city manager within thirty days from the decision of the fire chief. The city manager shall within thirty days after receipt of the written appeal, hear the appeal and render his decision. (Ord. 443 § 3, 1979; Ord. 824 §1, 2003)

#### **8.08.080 New materials, processes and occupancies requiring permits.**

The city manager, building inspector and fire chief shall act as a committee to determine and specify, after giving affected persons an opportunity to be heard, any new materials, processes or occupancies, which shall require permits, in addition to those now enumerated in

the Fire Prevention Code as hereby adopted. (Ord. 460 § 3, 1980; Ord. 443 § 4, 1979)

#### **8.08.090 False alarms.**

It is unlawful for any person to give or turn in a false alarm of fire in the city either at the fire alarm boxes of the city or otherwise, when the person giving or turning in such alarm knows at the time no fire exists which would endanger life or property. (Ord. 430 § 10, 1979)

#### **8.08.100 Restrictions on deliveries of flammable or combustible liquids.**

No deliveries or loading or unloading of flammable or combustible liquid will be made unless deliveries can be made with the entire tank vehicle located at an authorized distribution point. (Ord. 824 § 1, 2003; Ord. 448 § 2, 1980; Ord. 390 § 7, 1972)

#### **8.08.110 Violation—Penalty.**

A. Any person who violates any of the provisions of the Fire Prevention Code or this chapter, or fails to comply therewith, or who violates or fails to comply with any order made thereunder, or who builds in violation of any detailed statement or specifications or plans submitted and approved thereunder, or any certificate or permit used thereunder, or from which no appeal has been taken, or who fails to comply with such an order as affirmed or modified by the council or a court of competent jurisdiction, within the time fixed, shall severally for each and every violation and noncompliance respectively be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not to exceed two thousand five hundred dollars and/or imprison-

ment for a period not to exceed six months or by both such fine and imprisonment. Each day that violation continues shall be a separate offense punishable as hereinabove described.

B. The application of the above penalty shall not be held to prevent the enforced removal of prohibited conditions. (Ord. 824 § 1, 2003; Ord. 430 § 13, 1979)

## **Chapter 8.10**

### **FIRE LANES**

#### **Sections:**

- 8.10.010 Fire lane defined.**
- 8.10.020 Establishment required.**
- 8.10.030 Records.**
- 8.10.040 Markers and signage.**
- 8.10.050 Specifications.**
- 8.10.060 New and existing structures.**
- 8.10.070 Modifications.**
- 8.10.075 APPEALS.**
- 8.10.080 Prohibited obstructions.**
- 8.10.090 Removal of obstructions.**
- 8.10.100 Parking violations.**
- 8.10.110 Failure to establish or maintain fire lanes—Penalty.**
- 8.10.120 Parking citations—Penalty.**

#### **8.10.010 Fire lane defined.**

A fire lane is an area, parking lot, driveway, roadway, or portion thereof designated or approved as such by the fire chief of the City of Douglas. (Ord. 575 § 1, 1991)

#### **8.10.020 Establishment required.**

Fire lanes shall be required of and established for all shopping centers, malls, commercial and manufacturing structures, businesses or areas constructed or reconstructed after the date the ordinance codified in this chapter becomes effective. (Ord. 824 § 2, 2003; Ord. 575 § 6, 1991)

#### **8.10.030 Records.**

At all times the fire chief shall maintain a permanent record, available for public inspection, of all orders establishing fire lanes and all exceptions granted by the fire chief. (Ord. 575 § 10, 1991)

#### **8.10.040 Markers and signage.**

Fire lanes shall be marked with standard signs and/or other markers as approved by the fire chief. The markings of fire lanes shall be accomplished and maintained by the property owner or occupant. (Ord. 575 § 2, 1991)

#### **8.10.050 Specifications.**

Fire lanes shall be constructed to within one hundred fifty feet of an entrance to the interior or other point approved by the fire chief, of buildings two stories or less in height and to within fifty feet of an entrance to the interior or a point approved by the fire chief for buildings three stories or more in height. Fire lanes shall be a minimum of twenty feet in width and they shall have vehicle passing points of twenty-five feet in width and of a length and interval as designated by the fire chief. Fire lanes shall be surfaced in a manner designed to support the maximum weight of fire apparatus and out of materials approved by the fire chief. Engineering data shall be submitted with plans for the construction of fire lanes to the fire chief in addition to any other required plans submittals, and the fire chief shall have the authority to approve, reject or modify the plans in accordance with the authority granted him in the 1997 Uniform Fire Code and the 1998 National Fire Protection Codes. Fire lanes shall have a vertical clearance of not less than thirteen feet six inches and have a maximum gradient of eight percent (eight feet in one

hundred feet) and forty feet maximum centerline radius on curves. Fire lanes shall be dead-ended at no more than two hundred feet maximum length or they shall allow through passage or they shall terminate in a minimum sixty-foot centerline radius cul-de-sac. (Ord. 824 § 2, 2003; Ord. 575 § 7, 1991)

**8.10.060 New and existing structures.**

Fire lanes established for new and existing structures shall in all other respects conform to fire lane requirements applicable at the time of construction pursuant to other ordinances or codes of the city. If no prior lane requirements were applicable at the time of construction, the fire chief may require establishment of fire lanes to conform with the requirements of this chapter insofar as is practical without requiring construction or structure modification. (Ord. 575 § 8, 1991)

**8.10.070 Modifications.**

The fire chief reserves the right to grant a variance to specification requirements in order to best address varying occupancies, sizes and hazards of buildings. Variances shall be consistent with Section 103.1.3 of the 1997 Uniform Fire Code. (Ord. 824 § 2, 2003; Ord. 575 § 9, 1991)

**8.10.075 Appeals.**

Whenever the fire chief denies a request for a variance, an applicant may appeal from the decision of the fire chief, in writing, to the city manager within thirty days from the decision of the fire chief. The city manager shall within thirty days after receipt of the written appeal, hear the appeal and render his decision. (Ord. 824 § 2, 2003)

**8.10.080 Prohibited obstructions.**

Fire lanes shall be maintained clear of obstructions. (Ord 824 § 2, 2003; Ord. 575 § 3, 1991)

**8.10.090 Removal of obstructions.**

Any vehicle, trailer or other obstructions stopped or parked within a fire lane may be removed at the expense of the vehicle owner. Removal of a vehicle, trailer or other obstruction may be authorized by the person in lawful possession of the property or by the fire chief or his representative. It is the duty of the person in lawful possession of the property to use his/her/its best efforts to keep designated fire lanes free of vehicles, trailers or other obstructions. (Ord. 575 § 5, 1991)

**8.10.100 Parking violations.**

It shall be unlawful for any person to park a motor vehicle, trailer or other obstruction in a fire lane, or otherwise obstruct a fire lane. (Ord. 824 § 2, 2003; Ord. 575 § 4, 1991)

**8.10.110 Failure to establish or maintain fire lanes—Penalty.**

If a fire lane is required under this chapter and it is not established or maintained by the owner or occupant of the premises as required, and after twenty days' written notice of the violation to the owner or occupant by the fire chief demanding compliance, the fire chief or his designee shall issue a violation citation. Upon conviction, the penalty for the violation shall be in a sum not to exceed three hundred dollars for each day that the owner or occupant is found to have been in violation. (Ord. 575 § 12, 1991)

**8.10.120      Parking citations—Penalty.**

Douglas police officers shall have the duty and the responsibility to issue citations for the unauthorized standing, parking or stopping in all properly marked (and not otherwise exempted) fire lanes. Unauthorized standing, parking or stopping in a fire lane is a civil traffic offense and the penalty upon conviction shall be forty dollars. (Ord. 575 § 11, 1991)



## **Chapter 8.16**

### **SOLID WASTE COLLECTION AND DISPOSAL**

#### **Sections:**

- 8.16.010 Solid waste division.**
- 8.16.020 Definitions.**
- 8.16.030 Prohibited practices.**
- 8.16.040 Collection and disposal by the city.**
- 8.16.050 Receptacles.**
- 8.16.060 Billing, collection and rates.**
- 8.16.070 Vehicles transporting solid waste.**
- 8.16.080 Fly-breeding conditions.**
- 8.16.090 Rights of entry.**
- 8.16.100 Conflict with other ordinances or codes.**
- 8.16.110 Violation—Penalty.**
- 8.16.120 Enforcement.**
- 8.16.130 Scheduled collections.**

#### **8.16.010 Solid waste division.**

A. The solid waste division shall continue and remain a part of the department of public works. Reference to the department of public works shall include the solid waste division.

B. The solid waste division shall: (1) implement and enforce the provisions of this chapter for the promotion of the public health and safety; and (2) regulate and control the storage, collection and disposal of all solid waste originating within the City of Douglas. (Ord. 657 § 1, 1995)

#### **8.16.020 Definitions.**

When used in this chapter, the following words and phrases shall be defined as follows:

“Animal offal” includes meat scraps, bones, or other wastes resulting from the processing of animals for food, and dead animals to be processed for their commercial value.

“Body wastes” means animal or human body excrement.

“Class I solid waste” means all nonputrescible solid wastes such as cinders, ashes, wastepaper, excelsior, rags, wooden boxes, cardboard boxes, or paper boxes, bottles, broken ware, tin cans, metal scraps, small mechanical parts, sawdust, shavings, floor sweepings, cooler pads, and furnace filters. (Ord. 830 § 1, 2003)

“Class II solid waste” means all nonputrescible solid wastes, such as tree trimmings, tree limbs, yard clippings grass cuttings, palm fronds, weeds, shrubs, and brush.

“Commercial establishment” means any nonresidential buildings, structure or premises and includes all businesses, institutions, motels, hotels, governmental agencies, schools, nursing homes and hospitals.

“Commercial solid waste” means any solid waste produced by a commercial establishment.

“Debris” means leftover, superfluous, disposable or unwanted material resulting from construction, repair, demolition or clean up of premises that is not class II solid waste.

“Explosives” means any chemical compound or mechanical mixture commonly used or intended for the purpose of producing an explosion which contains any oxidizing and combustible units or other ingredients in such proportions, quantities or packing that an ignition by fire, friction, percussion, or detonator of any part of the compound or mixture may cause such a sudden generation of highly heated gases that the resulted gaseous pressure are capable of producing destructive

effects on contiguous objects or destroying life or limb.

“Flammable material or liquid” means any material or liquid which has a flash point of seventy degrees Fahrenheit or less, as outlined in the Material Safety Data Sheet (MSDS). (Ord. 830, § 1, 2003)

“Garbage” means all animal and vegetable wastes resulting from the handling, preparation, cooking or consumption of foods or such other worthless offensive matter, the accumulation of which may create a nuisance or be deleterious to public health or offensive to sight or smell, that is not “class I solid waste.”

“Hazardous waste” means:

1. Any waste or combination of wastes which because of its quantity, concentration or physical, chemical or infectious characteristics may cause or significantly contribute to an increase in mortality or an increase in serious, irreversible or incapacitating reversible illness or pose a substantial present or potential hazard to human health or the environment if improperly treated, stored, transported, disposed of or otherwise managed; or

2. Any waste identified as hazardous pursuant to A.R.S. Section 49-921 or other applicable Arizona statute; or

3. A substance which has been determined by the United States Department of Transportation to be capable of posing an unreasonable risk to health, safety and property if transported in commerce; or

4. Any material identified as hazardous pursuant to 42 U.S.C.A. Sections 6901, et seq., as amended, or other applicable federal statute or regulation.

“Industry or industrial solid waste” means that waste which is the byproduct of a manufacturing process.

“Littering” or “to litter” occurs when a person throws, drops, places, discards or otherwise deposits upon public property or the property of another, other than in an authorized waste receptacle, any paper, bottles, refuse, garbage, trash, or other solid waste which he does not immediately remove and which tends to create a danger to the health, safety or welfare or to impair the environment of the residents of the city if so discarded.

“Permitted private collector” is an individual, partnership, corporation or other business which collects any item of waste as defined in this section, on account of one or more persons, commercial establishments, premises or residences, for a fee or charge and who may be required to possess a valid business or occupational license and/or a private collector permit or one who may contract with the city pursuant to Section 8.16.040.

“Person” includes individuals, corporations, commercial enterprises, or other entities.

“Premises” means land, buildings, or other structures or parts thereof.

“Private collector permit” means a permit issued to a permitted private collector by the city clerk upon payment of all applicable fees, whether established by this chapter or otherwise, and upon the permitted private collector having approval by a designated person within the department of public works, of all health and safety considerations relating to the permitted private collector’s operation.

“Radioactive material” or “radioactive substance” means any substance which emits ionizing radiation, including low-level radioactive waste as defined in the Southwestern Low-Level Radioactive Waste Disposal Compact.

“Refuse” means all putrescible and nonputrescible solid waste, including garbage, animal offal, rubbish, trash, wastes, but not including body wastes or debris.

“Residence” means any building or structure used as a family domicile including any single and multi-family dwelling units, apartments, rooming houses, boarding houses and trailer courts.

“Toxic chemicals” or “toxic substances” means a substance, other than a radioactive substance which has the capacity to produce injury or illness to man through ingestion, inhalation or absorption through any body surface.

“Waste” means unwanted or superfluous matter.

“Waste receptacle” means a container which is made of galvanized metal or hard plastic, is designed and intended to receive trash and other solid waste, and is of watertight construction with a tight fitting lid or cover capable of preventing the escape of the container’s contents. Such receptacles shall have handles sufficiently strong for workers to lift and empty the receptacles. The receptacles shall be of not more than thirty-two gallons capacity. (Ord. 704 § 1, 1997; Ord. 657 § 2, 1995)

#### **8.16.030 Prohibited practices.**

In addition to the prohibitions contained in Chapter 8.32 and A.R.S. Sections 13-1603 and 49-791, it is unlawful:

A. For any person to deposit upon the streets, alleys, public grounds or upon any vacant lot in the city, any garbage, solid waste, class I or II, or debris of any nature, except at such times and places and under such

regulations as the solid waste division may from time to time permit or adopt; or

B. For any person to litter within the city; or

C. For any person to place refuse, garbage, debris or other solid waste in a solid waste receptacle or in a duly licensed waste collection facility in such a manner as to allow the refuse, garbage or other solid waste to be carried, deposited or strewn in or upon any public place or private premises; or

D. For any person not authorized by the city to remove any solid waste or other material from any existing collection routes; or

E. For any person not authorized by the owner of a solid waste receptacle to remove any solid waste from that receptacle; or

F. For any person to upset or tamper with a solid waste receptacle or permit its contents to be strewn, scattered or deposited upon any public or private property. (Ord. 704 § 2, 1997; Ord. 657 § 3, 1995)

#### **8.16.040 Collection and disposal by the city.**

A. Except as otherwise provided in this chapter, the collection and removal of any and all solid waste herein provided shall be performed exclusively by city or such collection may be handled exclusively for the city through a permitted private collector approved by the city council with whom it shall contract for a period not to exceed five years. Any such contractor have the same right and responsibility as does the city to remove and dispose, as may be provided in said contract, of all solid waste accumulated within the city during the term of said contract.

B. The permitted private collector shall have the same right and responsibility as does

the city to dispose of all solid waste by approved methods as may be directed by the city during the term of said contract. (Ord. 657 § 4, 1995)

#### **8.16.050 Receptacles.**

##### **A. Receptacles Required:**

1. No owner, tenant, lessee or occupant of any public or private premises shall place or permit to accumulate upon his premises any refuse, class I or II solid waste, or commercial solid waste, except in waste receptacles that are in good repair. A maximum of six (6) items (receptacles, bags, boxes, or bundles) per collection day shall be picked up at any one time at the premise's refuse collection site. The owner, tenant, lessee or occupant shall own and maintain sufficient receptacles for the deposition of class I and class II solid waste, garbage, and refuse regularly generated by the user. Identifying addresses must be affixed/painted on receptacles. The City is not responsible for damage to receptacles which may occur during trash collection. (Ord. 830 § 1, 2003)

2. Owner, tenant, lessee or occupant may dispose of class I and class II solid waste, garbage, and refuse not regularly generated by the user in plastic garbage bags. Garbage bags shall not exceed the volume of a 32-gallon container and the 65 pound weight limit. Each bag shall count as one (1) item towards the six-item limit per collection day. (Ord. 830 § 1, 2003)

3. It is unlawful for any person to dump or deposit, or cause to be dumped or deposited any refuse in any waste receptacle not owned or maintained by him.

4. The lids or covers of waste receptacles shall be kept securely in place at all times,

except when the refuse or solid waste is being deposited or removed for collection, so that flies and other insects may not have access to the contents thereof.

##### **B. Waste Receptacles for Class I and II Solid Waste and Garbage for Residential Use.**

1. Each owner, occupant, tenant or lessee of any premises where solid waste is generated and accumulates shall provide waste receptacles for garbage and class I and II solid waste. Total weight of each waste receptacle and its contents shall not exceed sixty-five (65) pounds. Waste receptacles shall be maintained in a sanitary condition. Racks to hold the waste receptacles shall be required if trash is found repeatedly uncontained and in a littered state. If rack is required, a written thirty-day notice to comply shall be sent by first-class mail to the owner, tenant, lessee or occupant who receives the monthly statement of account. (Ord. 830 § 1, 2003)

2. Class I solid waste and garbage shall be put in plastic bags before being placed in approved waste receptacles. All household garbage shall be drained of excess liquids. (Ord. 830 § 1, 2003)

C. Disposal of Tree and Yard Trimmings. Tree trimmings, branches and limbs may be placed outside waste receptacles in the same pick-up location as the receptacles, provided that the trimmings, branches and limbs are cut into no more than four-foot lengths and tied into bundles not larger than eighteen inches in diameter when placed out for collection. The owner, tenant, lessee or occupant may dispose of tree trimmings and yard clippings in plastic garbage bags as long as bag is of sufficient strength to ensure it does break and cause contents to disperse during sanitation collection. Plastic garbage bag shall not exceed the volume of a 32-gallon container and

the sixty-five (65) pound weight limit. Each bag shall count as one item towards the six (6) item limit per collection day. Total weight of any bundle shall not exceed sixty-five (65) pounds. (Ord. 830 § 1, 2003)

D. Receptacles for Commercial Solid Waste.

1. Each commercial establishment shall provide solid waste receptacles as required for residential class I solid waste unless another type receptacle is approved by the department of public works.

2. Each commercial establishment where the volume of commercial solid waste cannot be conveniently maintained in residential type receptacles shall provide metal receptacles, bins or enclosures constructed of noncombustible material. These receptacles shall be approved by the solid waste section before being placed into service. Metal receptacles shall have a minimum capacity of one cubic yard and a maximum of eight cubic yards (unless a greater capacity container is approved by the solid waste section) and the design thereof shall be compatible with the type of collection equipment in use by the city. All bins and enclosures shall have suitable hatches, doors, and covers to prevent material from overflowing, spilling or scattering onto surrounding premises. All receptacles, bins, or enclosures shall be maintained in a sanitary and fire-preventive condition by the commercial establishment.

E. Identification of Receptacles. Each receptacle shall be clearly identified by painting or otherwise marking the name or address of the owner on the receptacle and lid.

F. Inspection of Receptacles. Regular inspection of receptacles by the department of public works shall be made to secure compliance with this section. Owners or

occupants of the property upon which violations of this section occur shall be notified of such violations. Failure to cure such violations of this section after an appropriate warning shall be considered a violation of this chapter and such receptacle may be confiscated.

G. Placing for Collection.

1. All receptacles shall be placed at the alley property line. The receptacles shall be protected at all times against overturning by dogs or other animals. Receptacles may be placed either in the alley abutting the property, in a recessed opening of the alley fence, or within the premises at the alley property line; provided that the receptacles are at all times readily accessible to the collection agency.

2. Where there is a side entrance opening upon a public street but no alley, receptacles shall be placed on the premises and adjacent to the property line on which the side entrance is located at a point between fifty feet and seventy-five feet back from the front property line.

3. Where there is neither alley nor side entrance, receptacles shall be placed on the curb in front of the premises.

4. Receptacles shall not be permitted to remain adjacent to the street or on the curb except on regular collection days.

H. Containers, receptacles, bins or enclosures used by a commercial establishment shall be placed as follows:

1. Same as residential receptacles/containers or elsewhere in side or rear yards.

2. None shall be placed beneath a fire escape or so as to restrict egress from an exit door. None shall be placed under a street floor window unless such window is of fire-resistant construction.

I. Special Handling of Refuse.

1. All large items of refuse such as boxes, cartons, and crates over twenty-eight inches on any one side shall be collapsed for easy handling by collection crews. Bundles must be securely tied and the total weight of a bundle shall not exceed sixty-five (65) pounds. (Ord. 830 § 1, 2003)

2. Ashes shall not be placed in the same receptacle with any flammable substance, but shall be placed in separate metal containers of the type required for garbage. Ashes shall be soaked with water when necessary to extinguish live embers and drained of excess liquid before disposal. (Ord. 830 § 1, 2003)

3. Disposal of following types of refuse is prohibited: Auto bodies, septic tank or cesspool pumping, hazardous waste, toxic chemicals, insecticides, pathological or biological waste, carcasses of dead animals, radioactive material, explosives, flammable material, dead batteries, antifreeze, automobile oil, and automobile parts. (Ord. 830 § 1, 2003)

4. It is the responsibility of the owner or occupant of property to dispose of large bulk items such as mattresses, appliances, furniture, tree trunks, tires, etc. If an owner or occupant of residential property desires, it can be arranged for city crews to dispose of these bulk items for an extra fee. The fee would be based on a flat rate of fifteen dollars per pickup plus transfer station fees in accordance with the current county solid waste fee schedule for residential user. Work is to be scheduled and fees paid through the department of public works prior to pickup.

5. Body wastes and debris shall not be placed with refuse for collection, but shall be disposed of directly by the person or persons owning, occupying or leasing the premises wherein such matter is accumulated; however,

body wastes of domestic pets may be placed with refuse provided it is securely wrapped.

6. It shall be the responsibility of the owner or occupant of property to dispose of all building materials and construction rubbish or debris accumulated as a result of any construction operations on that property.

7. Industrial and construction solid waste producers requiring collection outside the regular collection periods set by the solid waste division may arrange for disposal upon terms and conditions approved in writing by the director of public works. (Ord. 704 § 3, 1997; Ord. 657 § 5, 1995)

**8.16.060 Billing, collection and rates.**

A. 1. The water division of the department of public works is authorized and directed to include the charges for solid waste collection to its charge for water services and submit the same on a bill prepared in connection with said water services and the said water division shall be authorized to discontinue services on both water and solid waste services if the entire bill is not paid. Said sums for solid waste collection service shall become delinquent upon the same dates as the water bill upon which the same is charged. If said charge is not paid on or before the payment delinquent date, the water service of said premises shall be shut off and solid waste collection stopped in the same manner as provided for in the case of delinquency in the payment of water bills.

2. All authorized solid waste charges, other than those referred to in subsection (A)(1) of this section shall be billed by and paid to the water division on a monthly basis. All accounts billed shall become delinquent and thus subject to collection twenty days after the billing date.

3. No person or commercial establishment within the city shall be permitted to avoid or refuse to accept such solid waste collection and disposal service, and the failure of any person to accept such service shall not exempt him from the payment of the charges herein set forth.

B. Establishment of Rates for Solid Waste Collection (effective September 1, 1999).

1. Single family residence and multi-family residence with individual water meter: \$10.75 per month.

2. Multi-family developments without individual water meters: \$10.75 per month for the first occupied individual dwelling unit and \$9.50 per month for each additional individual unit whether occupied or not.

3. Each mobile home or trailer space, whether occupied or not, in a mobile home court or trailer park: \$10.75 per month.

4. For commercial establishments, a monthly fee of \$47.50 per hour shall be assessed, multiplied by the average number of hours spent by City solid waste crews in the collection of solid waste at the establishment during that month.

(a) The average time spent by City solid waste crews in the collection of solid waste at the establishment shall be based on a time study at the establishment over a period of not less than one week. The City shall not be required to undertake more than one time study at the establishment in each six (6) month period.

C. Minimum Fees.

The following minimum monthly fees shall be charged whether the City solid waste collection service or an outside collection service is used:

1. Single family residences, multi-

family residences with three or fewer units, and mobile home courts/trailer parks with three or fewer units shall be charged the rate of \$10.75 per month.

2. Commercial establishments, multi-family residences with four or more units and mobile home/trailer courts with four or more units shall be charged the monthly rate set out in Section 8.16.060 (B) unless the Public Works Department is notified in writing that an outside collection service has been retained to provide collection services, in which case the minimum service charge shall be \$20.20 per month.

D. Other Provisions for Collection.

1. Notwithstanding any provision of this chapter to the contrary, any owner, tenant, lessee, occupant, or person in possession of any building, structure, or premises within the city shall have the right to dispose of his solid waste in a manner and at a place approved by the department of public works or, when allowed by this chapter, engage the services of a permitted private collector.

2. Any such person shall dispose of their solid waste at the Cochise County Transfer Station and in a manner consistent with the provisions of this chapter. (Ord. 830 § 1, 2003; Ord. 657 § 6, 1995)

#### **8.16.070 Vehicles transporting solid waste.**

It is unlawful for any person or permitted private collector to haul or cause to be hauled on or along any public street or alley any waste unless it shall be contained in vehicles or receptacles so constructed as to prevent the contents from falling, leaking or spilling or any noxious odor escaping therefrom and to prevent any flies, insects, or rodents from

having access to the contents. Such vehicles or receptacles shall be constructed and maintained in the manner prescribed by the department of public works. Every person hauling any refuse along any street or alley shall replace immediately in the conveyance used for such hauling any of the contents which may fall therefrom in or upon any street, alley or public or private premises. (Ord. 657 § 7, 1995)

#### **8.16.080 Fly-breeding conditions.**

A. Premises to be Kept Free of Fly-Breeding Substances. It shall be the responsibility of every owner, lessee or tenant of any premises within the city to keep the premises at all times clean and inoffensive and free from any accumulation of garbage, refuse, ashes, rubbish, putrescible wastes, vegetable waste, animal offal, carcasses of dead animals and any other conditions wherein houseflies or other flies will breed.

B. Fly-Breeding Conditions Declared Nuisance—Abatement. Any condition wherein flies breed is declared to be a public nuisance. Any person who, upon written notification of the department of public works, its authorized agent or the sanitation officer, fails purposely to abate such nuisance shall be in violation of this chapter. The nuisance shall be abated and removed by the department of public works at the expense of such person. (Ord. 657 § 8, 1995)

#### **8.16.090 Rights of entry.**

The department of public works or its authorized agent shall be and are hereby authorized to enter into or upon any premises within the corporate limits of the city for the purpose of making necessary inspections and issuing notices, instructions or citations for any

and all violations of the provisions of this chapter. This Section shall not limit the right of representatives of the public health department, the fire department, or other departments from inspecting the premises of any commercial establishment and enforcing abatement of unsanitary or unsafe conditions found therein. (Ord. 657 § 9, 1995)

#### **8.16.100 Conflict with other ordinances or codes.**

Whenever the provisions of this chapter shall conflict with any other provisions of this code or other ordinance, the provisions of this chapter shall prevail. (Ord. 657 § 10, 1995)

#### **8.16.110 Violation—Penalty.**

A. Any person violating this chapter by littering material other than glass bottles shall be fined not less than fifty dollars (\$50.00) nor more than two thousand five hundred dollars (\$2,500.00) for each offense, and a separate offense shall be deemed committed on each day during or on which a violation occurs.

B. Any person violating this chapter by littering glass bottles and/or other glass materials shall be fined no less than five hundred dollars nor more than two thousand five hundred dollars for each offense and a separate offense shall be deemed committed on each day during or on which a violation occurs.

C. In addition to any other penalty imposed, any person found guilty of violating the provisions of this chapter shall be liable for the payment of all costs incurred by the City which are caused by that violation. ( Ord. 830 § 1, 2003; Ord. 704 § 4, 1997; Ord. 657 § 11, 1995)



**8.16.120 Enforcement.**

A. 1. When the owner, lessee, tenant or other possessor of land being served under the provisions of this chapter has had charges or penalties assessed against them, and payment has not been received, the city clerk may assign the account to a bona fide collection agency or institute legal action for the recovery of the amount due, in addition to a reasonable attorney's fee, court costs, and all reasonable expenses of collection.

2. The city may also apply for a lien and foreclosure thereof as hereinafter provided.

3. The provision of the city of Douglas Water and Sewer Code, 1975, adopted by Ordinance No. 405 of the city of Douglas, and specifically, Section 6-4 entitled "Imposition of lien upon property served for failure to pay for water, material, labor or other service," is incorporated in this chapter by reference thereto and whenever any charges, expenses or penalties are imposed by this chapter, they may be implemented by the use of the provisions contained in Section 6-4 of the aforesaid Douglas Water and Sewer Code. There are on deposit with the city clerk at least three copies of the Douglas Water and Sewer Code and the specific section being adopted hereby.

B. The city manager, or his designee, shall have authority to issue citations for violations of this chapter. He shall have the authority to designate agents, including sanitation workers, who shall have authority to issue citations for violations of this chapter. (Ord. 830 § 1, 2003; Ord. 657 § 12, 1995)

A. Residential, multiple-dwelling, trailer courts and mobile homes: eight collections.

B. Restaurants, taverns, food establishments, commercial, business and industrial: sixteen collections. (Ord. 657 § 13, 1995)

**8.16.130 Scheduled collections.**

The minimum solid waste collections per billing period shall be as follows:

## **Chapter 8.20**

### **OPEN BURNING**

#### **Sections:**

- 8.20.010 Permit issuance.**
- 8.20.020 Air pollution.**
- 8.20.030 Enforcement.**
- 8.20.040 Permit—Fees.**
- 8.20.050 Violation—Penalty.**

#### **8.20.010 Permit issuance.**

In order to have authority to authorize the issuance of open burning permits, the chief of the Douglas fire department, or his designee, shall apply to the Arizona Department of Environmental Quality as needed for a delegation of authority to issue open burning permits. (Ord. 582 § 1, 1991)

#### **8.20.020 Air pollution.**

The chief of the Douglas fire department or his designee shall at all times be conversant with state and federal laws and agency regulations dealing with air pollution regulations on open burning. (Ord. 582 § 2, 1991)

#### **8.20.030 Enforcement.**

Upon delegation of authority by the Arizona Department of Environmental Quality, or any other appropriate state or federal agency, the Douglas fire department, through the chief or his designated employee, shall be responsible for the enforcement of open burning limitations within the city limits of the city of Douglas and shall report any violations of the air pollution regulations on open burning to the Department of Environmental Quality or other appropriate agency. (Ord. 582 § 3, 1991)

#### **8.20.040 Permit—Fees.**

Whenever a permit is required to be issued for open burning other than to a state, federal, county, school district or municipal government, application fees shall be paid for each application and permit. The fee shall be five dollars per application, except that the fees for permits for open burning at or relating to construction sites, or for commercial or business premises shall be twenty-five dollars per application and permit. All fees shall be paid to the city treasurer at or before the issuance of any permit. (Ord. 582 § 4, 1991)

#### **8.20.050 Violation---Penalty.**

Any person, business, or corporation violating any provision of this chapter shall be guilty of a misdemeanor and upon conviction thereof, shall be punishable by a fine of not less than fifty dollars or more than five hundred dollars. (Ord. 810 § 2, 2002)

## **Chapter 8.24**

### **SMOKING PROHIBITED IN CITY FACILITIES AND VEHICLES**

#### **Sections:**

- 8.24.010 Definitions.**
- 8.24.020 City facilities and vehicles—Signage.**
- 8.24.030 Smoking optional areas.**
- 8.24.040 Protection of nonsmokers.**
- 8.24.050 Interpretation—Severability.**
- 8.24.060 Violation—Penalty.**

#### **8.24.010 Definitions.**

The following words and phrases, whenever used in this chapter, shall be construed as set forth herein:

A. “Enclosed area” means any area closed in by a roof and walls with openings for ingress and egress.

B. “Smoking” means lighting or burning tobacco or any other weed or plant; possessing any lighted cigar, cigarette, tobacco or any other weed or plant; possessing any lighted pipe or any other type of lighted smoking equipment; and placing any burning tobacco, weed or plant in an ashtray or other receptacle and allowing smoke to diffuse into the air. (Ord. 613 § 1, 1993)

#### **8.24.020 City facilities and vehicles—Signage.**

A. Smoking is prohibited in all vehicles, buildings, facilities or other enclosed areas owned, leased by or otherwise operated by the city.

B. “No Smoking” signs shall be conspicuously posted and maintained in each

area in which smoking is controlled by this chapter. Such signs shall include a reference to the ordinance codified in this chapter by number and a reference to the fine and may include the international “No Smoking” symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it). (Ord. 613 § 2, 1993)

#### **8.24.030 Smoking optional areas.**

Notwithstanding any other provision herein to the contrary, the following areas shall not be subject to the smoking prohibitions of this chapter: facilities, buildings and other areas which are owned by the city but leased to or otherwise operated by an entity other than the city, such as the facilities operated by the Douglas Golf Club. (Ord. 613 § 3, 1993)

#### **8.24.040 Protection of nonsmokers.**

It is the policy of the city to encourage all businesses and nonprofit organizations to make every reasonable effort to protect nonsmokers from the hazardous effects of sidestream or secondhand smoke. (Ord. 613 § 4, 1993)

#### **8.24.050 Interpretation—Severability.**

A. This chapter shall not be interpreted or construed to permit smoking where it is otherwise prohibited or restricted by any other applicable law or regulation.

B. If any provision or clause of this chapter or the application thereof to any person or circumstance is held to be invalid or unenforceable for any reason by a court of competent jurisdiction, such invalidity shall not affect other provisions, clauses or applications thereof which can be implemented without the invalid provision, clause or application, and to this end the provisions and clauses of this

chapter are declared to be severable. (Ord. 613 § 5, 1993)

**8.24.060 Violation—Penalty.**

It shall be unlawful for any person to violate any provision of this chapter which prohibits smoking and any such violation shall be punishable by a fine of fifty dollars. (Ord. 613 § 6, 1993)

## Chapter 8.28

### NOISE

#### Sections:

- 8.28.010 Definitions.**
- 8.28.020 Prohibitions—General.**
- 8.28.030 Prohibitions—Specific.**
- 8.28.040 Temporary exemptions.**
- 8.28.050 Exceptions.**
- 8.28.060 Interpretation—Severability.**
- 8.28.070 Violation—Penalty.**

#### **8.28.010 Definitions.**

The following words and phrases, whenever used in this chapter, shall be construed as set forth herein:

A. “Commercial area” means any area within a district zoned office, business, industry or special use.

B. “Construction” means any site preparation, assembly, erection, substantial repair, alteration, or similar action, for or on public or private property, rights-of-way, structures, utilities or other property.

C. “Demolition” means any dismantling or intentional destruction or removal of structures, utilities, public or private right-of-way surfaces or similar property.

D. “Emergency” means any occurrence or set of circumstances involving actual or imminent physical trauma or property damage or loss which demands immediate action.

E. “Emergency work” means any work performed for the purpose of preventing or alleviating the physical trauma or property damage threatened or caused by an emergency.

F. “Motor vehicle” has the same meaning as provided by A.R.S. Section 28-101.

G. “Noise sensitive zones” means areas immediately surrounding schools, institutions of learning, libraries, places of religious worship, hospitals, nursing homes and courts which conspicuously display signs indicating that those areas are so designated.

H. “Person” means any individual, association, partnership or corporation.

I. “Powered model vehicle” means any self-propelled airborne, waterborne, or landborne plane, vessel or vehicle which is not designed to carry persons, including, but not limited to, any model airplane, boat, car or rocket.

J. “Public right-of-way” means any street, avenue, boulevard, highway, sidewalk or alley.

K. “Real property boundary” means the property line along the ground surface and its vertical extension, which separates the real property owned by one person or public entity from that owned by another person or public entity.

L. “Residential” or “Residential area” means any area within a district zoned as single-family or multifamily or property upon which a hotel, motel, boarding house or other building which contain sleeping facilities is located.

M. “Unreasonable noise” means any sound which (1) annoys or disturbs a reasonable person of normal sensitivities; or (2) endangers or injures the safety or health of humans or animals; or (3) endangers or injures personal or real property. (Ord. 616 § 1, 1993)

#### **8.28.020 Prohibitions—General.**

In addition to the specific prohibitions contained herein, it is unlawful for any person to make, continue, or cause to be made or continued, or to permit an unreasonable noise.

Noncommercial public speaking and public assembly activities conducted on any public space or public right-of-way shall be exempt from the operation of this section. (Ord. 616 § 2, 1993)

#### **8.28.030 Prohibitions—Specific.**

The following acts, and the causing or permitting thereof, are declared to be in violation of this chapter:

A. Radios, Televisions, Musical Instruments and Similar Devices. Operating, using, playing or permitting the operation, use or playing of any radio, television, phonograph, tape or CD player, musical instrument, sound amplifier, or similar device which produces, reproduces or amplifies sound:

1. Between the hours of ten p.m. and six a.m. the following day in such a manner as to create an unreasonable noise across a residential real property boundary or within a noise sensitive zone; or

2. On any public right-of-way or on any public property (such as parks) if the sound generated is audible at a distance of thirty feet from the device producing the sound.

B. Loudspeakers and Public Address Systems. Using or operating for any purpose any loudspeaker, public address system, paging system, mobile sound system or similar device:

1. Such that the sound therefrom creates an unreasonable noise across a real property boundary or within a noise sensitive zone; or

2. Between the hours of ten p.m. and six a.m. the following day on a public right-of-way or on any public property.

3. This subsection shall not apply to the reasonable use of such devices at regularly scheduled events at stadiums and sports arenas.

C. Loading or Unloading. Loading, unloading, opening, closing or other handling of boxes, crates, containers, building materials, garbage cans, or similar objects between the hours of ten p.m. and six a.m. the following day in such a manner to cause an unreasonable noise across a residential real property boundary or within a noise sensitive zone.

D. Construction. Operating, using or permitting the operation or use of any tools or equipment in construction, drilling or demolition work:

1. Between the hours of ten p.m. and sunrise the following day on weekdays or at any time on weekends or holidays, such that the sound therefrom creates an unreasonable noise across a residential real property boundary or within a noise sensitive zone, except for emergency work;

2. This subsection shall not apply to the use of domestic power tools subject to subsection E of this section.

E. Domestic Power Tools. Operating or permitting the operation of any mechanically powered saw, sander, drill, grinder, lawn or garden tool or similar device used outdoors in residential areas between the hours of ten p.m. and six a.m. the following day so as to cause an unreasonable noise across a residential real property boundary.

F. Vehicle or Motorboat Repairs and Testing. Repairing, rebuilding, modifying or testing any motor vehicles, motorcycle or motorboat in such a manner as to cause an unreasonable noise across a residential property boundary or within a noise sensitive zone.

G. Explosives, Firearms and Similar Devices. The use or firing of explosives, firearms or similar devices which create an impulsive sound so as to cause an unreasonable

noise across a real property boundary or on a public right-of-way or other public property.

H. Powered Model Vehicles. Operating or permitting the operation of powered model vehicles so as to create an unreasonable noise across a residential real property boundary or within a noise sensitive zone between the hours of ten p.m. and six a.m. the following day.

I. Stationary Nonemergency Signaling Devices. Sounding or permitting the sounding outdoors of any signal from any stationary bell, chime, siren, whistle or similar device, intended primarily for nonemergency purposes:

1. For more than one minute in any hourly period in a commercial area; or
2. Between the hours of ten p.m. and six a.m. the following day when such devices cause an unreasonable noise across a residential real property boundary;
3. Devices used in conjunction with places of religious worship shall be exempt from the operation of this subsection.

J. Emergency Signaling Devices.

1. The intentional sounding or permitting the sounding outdoors of any fire, burglar, or civil defense alarm, siren, whistle or similar stationary emergency signaling device, except for emergency purposes or for testing. In no event shall such testing occur between the hours of ten p.m. and six a.m. the following day; or

2. Sounding or permitting the sounding of any exterior burglar alarm or any motor vehicle alarm unless such alarm is terminated within six minutes of activation.

K. Tampering. The following acts or causing thereof are unlawful:

1. The removal or rendering inoperative by any person other than for purposes of maintenance, repair or replacement of any noise control device; or

2. The use of a product which has had a noise control device removed or rendered inoperative, with knowledge that such action has occurred.

L. Noise Sensitive Zones. The creation of any sound which causes an unreasonable noise within such zones and which unreasonably interferes with the function of the institutions in such zones.

M. Animals. Permitting any excessive and unrestrained sound created by any animal which causes an unreasonable noise across a residential real property boundary. (Ord. 616 § 3, 1993)

#### **8.28.040 Temporary exemptions.**

The city manager may grant a temporary exemption from the provisions of this chapter when doing so would be in the public interest. Among the activities which may be authorized by the city manager are:

- A. Parades, concerts, festivals, fairs and similar activities;
- B. Athletic, musical or cultural activities or events; and
- C. Construction and demolition work under unusual conditions. (Ord. 616 § 4, 1993)

#### **8.28.050 Exceptions.**

Notwithstanding anything to the contrary herein, the provisions of this chapter shall not apply to the following:

- A. Officers, employees, departments, agencies and instrumentalities of the United States, the state of Arizona and any political subdivision of this state at such time as the aforesaid are engaged in their official duties or functions;
- B. The emission of sound for the purpose of alerting persons to the existence of an

emergency or for the performance of emergency work; and

C. Nonamplified crowd noises resulting from the planned activities of schools or community organizations. (Ord. 616 § 5, 1993)

**8.28.060 Interpretation—Severability.**

A. No provision of this chapter shall be construed to impair any common law or statutory cause of action, or legal or equitable remedy therefrom, of any person for injury or damage arising from any violation of this chapter or from other law.

B. If any provision or clause of this chapter or the application thereof to any person or circumstance is held to be invalid or unenforceable for any reason by a court of competent jurisdiction, such invalidity shall not affect other provisions, clauses or applications thereof which can be implemented without the invalid provision, clause or application, and to this end the provisions and clauses of this chapter are declared to be severable. (Ord. 616 § 7, 1993)

**8.28.070 Violation—Penalty.**

It is unlawful for any person to violate any provision of this chapter and any such violation shall constitute a Class 3 misdemeanor to be punishable by a fine of not more than five hundred dollars or thirty days of incarceration or both. (Ord. 616 § 6, 1993)



## **Chapter 8.32**

### **NUISANCES, LITTER, ABANDONED OR JUNK VEHICLES**

#### **Sections:**

#### **Article I.**

- 8.32.010 Purpose, scope.**
- 8.32.015 Definitions.**
- 8.32.020 Defendants and responsible parties.**
- 8.32.030 Public nuisance defined.**
- 8.32.040 Public nuisances designated.**
- 8.32.050 Parking in front yard.**
- 8.32.060 Littering in public places prohibited.**
- 8.32.070 Placement of litter in receptacles.**
- 8.32.080 Depositing litter in gutters prohibited.**
- 8.32.090 Throwing litter from vehicles prohibited.**
- 8.32.110 Littering on parks prohibited.**
- 8.32.120 Littering on private property prohibited.**
- 8.32.130 Private property owner to maintain premises.**
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- 8.32.170 Accumulation of litter on construction/demolition site prohibited.**

- 8.32.180 Storing, parking or leaving junk vehicles on private property unlawful.**
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- 8.32.430 Stay of order during appeal to hearing officer.**
- 8.32.440 Personal liability of owner.**

#### **Article I.**

#### **8.32.10 Purpose; scope.**

A. The purpose of this chapter is to promote the health safety, economic, aesthetic, and general welfare of the citizens of the city, and to protect neighborhoods against nuisances, blight and deterioration by establishing requirements for maintenance of all building exteriors, whether residential or non-residential, or structures of whatever kind, and establishing requirements for the maintenance of all land, whether improved or vacant.

B. This chapter shall apply to all buildings, structures, and lands within the city without regard to the use, the date of construction or alteration. (Ord. 826 § 1, 2003)

#### **8.32.015 Definitions.**

Unless otherwise specified, the following words shall have the meanings provided below.

“Abandoned or junk vehicle” means any motor vehicle or major portion thereof, the condition of which is wrecked, dismantled, partially dismantled, inoperative, incapable of

movement under its own power, or from which the wheels, engine, transmission or other substantial part thereof has been removed.

“Attractive nuisance” means the maintaining of a condition, instrumentality, machine, or other agency which is dangerous to young children because of their inability to appreciate peril and which may reasonably be expected to attract them.

“Authorized private receptacle” means a litter storage and collection receptacle as required and authorized in this chapter.

“Blight or blighted” means unsightly conditions including, but not limited to the accumulation of debris; fences characterized by holes, breaks, rot, crumbling, cracking, peeling, or rusting; landscaping that is dead, damaged, characterized by uncontrolled growth or lack of maintenance, and any other similar conditions of disrepair and deterioration that contribute to the depreciation of neighborhood property values or affect the health, safety, economic, aesthetic, or general welfare of citizens.

“Building” means any structure used or intended for supporting or sheltering any use or occupancy.

“Debris” means junk, lumber, furniture, furniture parts, stoves, sinks, cabinets, household fixtures, refrigerators, car parts, abandoned, broken or neglected equipment, or the scattered remains of something of little or no apparent economic value.

“Deteriorated or deterioration” means a lowering in quality in the condition or appearance of a building or structure or parts thereof. The fact or process of decay or degeneration, characterized by holes, breaks, rot, crumbling cracking, peeling, rusting, vermin infestation, unsafe or unsanitary conditions, or any other evidence of physical

decay or neglect or excessive use or lack of maintenance.

“Exterior surfaces” means building exterior surfaces and attachments to the building, including but not limited to, walls, roofs, doors, windows, gutters, down spouts, antennas, porches, garages, patios, and chimneys.

“Front yard” means a yard extending across the full width of the lot, and having a depth equal to the horizontal distance between the nearest point of the main building and the front lot line, measured at right angles to the front lot line.

“Garbage” means any spoiled or discarded animal or vegetable material resulting from the handling, preparation, cooking, or consumption of food for humans or animals, as well as other organic waste material subject to rapid decomposition.

“Imminent hazard” means a condition that presents an immediate likelihood for causing serious personal harm due to a condition of incompleteness, deterioration, breaking, leaking, exposure, blight, or scattered with debris, litter, or garbage.

“Improved Parking Area” means an area covered by an all-weather, dust-free surface, properly drained to prevent impoundment of surface water.

“Land” means all land in the city whether improved or unimproved.

“Litter” means garbage, refuse, debris, rubbish and all other waste material which, if thrown or deposited in such a manner prohibited by this chapter, tends to create a danger to public health, safety and welfare. (Ord. 851 § 1, 2004)

“Major repair” means the removal from any vehicle of a major portion thereof including, but not limited to, the differential, transmission, head, engine block or oil pan.

“Motor vehicle” means any vehicle which is self-propelled and designed to travel along the ground and includes, but is not limited to, automobiles, motor homes, buses, motor bikes, motorcycles, motor scooters and trucks, which are required to be registered and licensed with the Arizona Department of Motor Vehicles.

“Person” means a human being, enterprise, corporation, association, partnership, firm or society.

“Private property” means any real property not owned by the federal government, state, county, city or political subdivision of the state.

“Public place” means any street, sidewalk, boulevard, alley or other public way and any public park, square, space, ground or building.

“Recreational vehicle” means a vehicular type portable structure without permanent foundation, which can be towed, hauled or driven primarily designed as a temporary living accommodation for recreational, camping and travel use and including but not limited to travel trailers, truck campers, camping trailers and self-propelled motor homes.

“Refuse” means all solid wastes except body wastes, including garbage, rubbish, ashes, waste oil, street cleanings, dead animals, abandoned, wrecked or junked vehicles or parts thereof and solid market and industrial wastes.

“Rubbish” means solid waste consisting of both combustible and noncombustible waste, such as paper, wrappings, weeds, cigarettes, cardboard, tin cans, yard clippings, leaves, metal, wood, glass, bedding, crockery, construction materials, and similar materials.

“Utility Trailer” means a vehicle without motive power designed for carrying property and for being drawn by a motor vehicle.

“Watercraft” means any craft or vehicle specifically designed for use on water such as,

but not limited to, a boat, canoe, jet ski, Pontoon or similar type craft.

“Weeds” mean poison oak, poison ivy, or any noxious or toxic weeds; or uncultivated plants or shrubs, tall grass, or growth higher than twelve (12) inches, or which presents a fire hazard. (Ord. 826 § 1, 2003)

#### **8.32.020 Defendants and responsible parties.**

A. Any person who causes, permits, facilitates, aids, or abets any violation of this chapter or who fails to perform any act or duty required pursuant to this chapter is subject to the enforcement provisions of this chapter.

B. Any person who is the owner, occupant, lessor, lessee, manager, agent or other with an interest in a building, structure or parcel of land in violation of this chapter is jointly and severally responsible for the violation, the prescribed civil or criminal sanctions, and for abating the violation.

C. The owner of record, as recorded in the county recorder’s office, of the property upon which the violation of this chapter exists shall be presumed to be the person having lawful control over the structure or parcel of land. If more than one person shall be recorded as the owner of the property, such persons shall be jointly and severally presumed to be persons having lawful control over a structure or parcel of land. This presumption shall not prevent the enforcement of the provisions of this chapter against any person specified in subsection (A) or (B) of this section. (Ord. 826 § 1, 2003)

#### **8.32.030 Public nuisance defined.**

For the purposes of this chapter, the term “public nuisance” shall be defined as any fence, wall, shed, deck, house, garage, building, structure or any part of any of the aforesaid; or

any tree, pole, smokestack; or any excavation, hole, pit, basement, cellar, sidewalk subspace, dock; or any lot, land, yard, premises or location which in its entirety, or in any part thereof, by reason of the condition in which the same is found or permitted to be or remain, shall or may endanger the health, safety, life, limb or property, or cause any hurt, harm, inconvenience, discomfort, damage or injury to any one or more individuals in the city, in any one or more of the following ways:

(1) By reason of being a menace, threat and/or hazard to the general health and safety of the community.

(2) By reason of being a fire hazard.

(3) By reason of being unsafe for occupancy, or use on, in upon, about or around the aforesaid property.

(4) By reason of lack of sufficient or adequate maintenance of the property, and/or being vacant, any of which depreciates the enjoyment and use of the property in the immediate vicinity to such an extent that it is harmful to the community in which such property is situated or such condition exists.

#### **8.32.040 Public nuisances designated.**

It shall be unlawful and a violation of this chapter for any person to erect, maintain, use, place, deposit, cause, allow, leave or permit to be or remain in or upon any private property, land, lot, building, structure or premises, or in or upon any public place, right-of-way, street, avenue, alley, easement, park, or other place in the city any one or more of the following:

A. Allowing premises to become unsanitary, a fire menace or a danger to health and safety through the accumulation, growth, storage, or retention of garbage, refuse, rubbish, weeds or other accumulation of filth or debris.

B. Creating an environment favorable to the harboring of insects and vermin, and/or a fire hazard, by allowing the growth of weeds or grass in excess of twelve (12) inches in height. Uncultivated natural growth in areas designated by the public works director as “natural areas” are excepted from this provision.

C. Permitting pools of water or other liquids to accumulate and remain upon the premises and become stagnant and foul. This provision shall not apply to natural drainages or drainages connected with streets or other public rights-of-way.

D. Retaining a blighted, dilapidated, deteriorated and/or dangerous building, shed, fence or other manmade structure which by reason of age, fire, faulty construction, lack of proper repair or any other cause is in such a condition that it constitutes an attractive nuisance to children or that its strength or stability is substantially less than a well constructed new building or it is likely to burn or collapse in whole or in part and its condition endangers the life, health, safety or property of the public, including but not limited to, any old abandoned or partially destroyed building or structure, or any building or structure commenced and abandoned.

E. Maintaining the unsheltered storage for fifteen (15) consecutive days or more of inoperable, junked, partially dismantled, discarded, motor vehicles and other objects such as appliances, machinery, implements and/or equipment which are no longer safely usable for the purposes for which manufactured (hereinafter collectively referred to as “personal property objects”), and which are visible from ground level beyond the boundary of the property. This definition shall not include personal property objects in a storage

area, repair shop, or other business enterprise in which the presence of such objects is necessary to the operation of the business and the business is operated in a lawful place and manner and in compliance with applicable zoning laws.

F. Leaving or permitting any unguarded, uncovered, unprotected or abandoned excavation, pit, well or hole dangerous to life or constituting an attractive nuisance to children.

G. Permitting the use of any building or premises in a way that permits or causes noxious exhalations which are discomforting, offensive or detrimental to the health of individuals or the public, including but not limited to, smoke, soot, dust, fumes, gases or other offensive odors or annoyances.

H. Leaving or permitting to remain outside of any dwelling, building or other structure, or within any unoccupied or abandoned building, dwelling or other structure under the control of any person and in a place accessible to children, any abandoned, unattended or discarded ice box, refrigerator or other container which has an airtight door or lid, snaplock or other locking device which may not be released from the inside, without first removing the door or lid, snaplock, or other locking device from the ice box, refrigerator or container.

I. Leaving any dwelling, building or other structure, whether occupied or unoccupied, with a damaged and/or open door, window, or other opening not secured to prevent entry to persons, animals, birds or vermin.

J. Causing, allowing or permitting any artificial illumination of such intensity to reflect beyond the property line onto adjacent public or private property as to interfere substantially with the use and enjoyment of the

property so as to constitute a nuisance, hazard or threat to the public health, safety, and welfare. (Ord. 826 § 1, 2003)

**8.32.050      Parking in front yard.**

A. It shall be unlawful to park or store any motor vehicle, recreational vehicle, watercraft, or utility trailer within the front yard of a single or multi-family dwelling; except a motor vehicle, other than a recreational vehicle, may be parked on an improved parking area in the front yard provided that the improved parking area does not exceed a maximum of fifty percent of the combined area of the front yard.

B. An exemption to subpart (A) shall be granted by the public works director: (1) when recreational vehicle, watercraft, or utility trailer has no back yard access and side yard fence does not allow parking in side yard without protruding into front yard; and (2) when parked on an improved parking area of the front yard. (Ord. 826 § 1, 2003)

**8.32.060      Littering in public places prohibited.**

No person shall throw or deposit litter in or upon any street, sidewalk, alley or other public place within the City except in public receptacles, or in authorized private receptacles for collection. (Ord. 826 § 1, 2003)

**8.32.070      Placement of litter in receptacles.**

Persons placing litter in public receptacles or in authorized private receptacles shall do so in such a manner as to prevent it from being carried, or deposited by the elements upon any street, sidewalk or other public place or upon private property. (Ord. 826 § 1, 2003)

**8.32.080      Depositing litter in gutters prohibited.**

A. No person shall sweep into or deposit in any gutter, street or other public place within the City the accumulation of litter from any public or private sidewalk or driveway or any building or lot.

B. Persons owning or occupying property or places of business shall keep the sidewalk in front of their premises, from their property line to the curb or public right of way, free of litter. (Ord. 826 § 1, 2003)

**8.32.090      Throwing litter from vehicles prohibited.**

No person, while a driver or passenger in a vehicle, shall throw or deposit litter upon any street or other public place within the City, or upon private property. (Ord. 826 § 1, 2003)

**8.32.110      Littering in parks prohibited.**

No person shall throw or deposit litter in any park within the City except in public receptacles and in such a manner that the litter will be prevented from being carried or deposited by the elements upon any part of the park or upon any street or other public place. Where public receptacles are not provided, all litter shall be carried away from the park by the person responsible for its presence and properly disposed of as provided in this chapter. (Ord. 826 § 1, 2003)

**8.32.120      Littering on private property prohibited.**

No person shall throw or deposit litter on any occupied or unoccupied private property within the City, whether owned by such person or not, except that the owner or person in control of private property may maintain authorized private receptacles for collection in

such a manner that litter will be prevented from being carried or deposited by the elements upon any public place. (Ord. 826 § 1, 2003)

**8.32.130 Private property owner to maintain premises.**

Every person owning, or managing, or having charge, control or occupancy of any real property in the City shall at all times maintain the premises free of litter and weeds; provided, however, that this section shall not prohibit the storage of litter in authorized private receptacles for collection. (Ord. 826 § 1, 2003)

**8.32.140 Public rights-of-way -- owner of adjacent property to maintain.**

Every person owning, or managing, or having charge, control or occupancy of any real property in the City shall at all times maintain the adjacent street right-of-way from the private property line to the curb or edge of pavement, and the portion of the alley contiguous with the property to the centerline of the alley, free of litter and weeds. (Ord. 826 § 1, 2003)

**8.32.150 Littering on vacant lots prohibited.**

No person shall throw or deposit litter on any open or vacant private property within the City whether owned by such person or not. (Ord. 826 § 1, 2003)

**8.32.160 Unsightly premises prohibited.**

Every person owning, or managing, or having charge, control or occupancy of any real property in the City shall not allow any part of such property visible from the street or adjoining premises to become so unsightly or

untidy as to substantially detract from the appearance of the immediate neighborhood or tend to threaten the safety and welfare of the immediate neighborhood. (Ord. 826 § 1, 2003)

**8.32.170 Accumulation of litter on construction/demolition site prohibited.**

It is unlawful for the owner, agent or contractor in charge of any construction or demolition site to cause, maintain, permit or allow to be caused, maintained or permitted the accumulation of any litter on the site before, during or after completion of a construction/demolition project. (Ord. 826 § 1, 2003)

**8.32.180 Storing, parking or leaving junk vehicles on private property unlawful.**

A. It is unlawful for a person to park, store, leave, or permit the parking, storing or leaving of any junk motor vehicle for a period in excess of five days upon any private property within the City; provided, however, that the provisions of this article shall not apply to any junk motor vehicle in:

1. an enclosed building or an area in a backyard which is completely screened from view by fencing, shrubbery, or otherwise; or
  2. the premises of a business enterprise which is properly operated in the appropriate business zone pursuant to the zoning laws of the City.
- (Ord. 826 § 1, 2003)

**8.32.190 Parking vehicles on public right-of-way unlawful.**

A. It is unlawful for the owner or any

person having control of a recreational vehicle, utility trailer, and/or watercraft, to allow the vehicle to remain parked or located upon the paved or unpaved portion of any street or alley within the City for a period of time in excess of seventy-two hours.

B. It is unlawful for the owner or any person having control of a motor vehicle to allow the vehicle to remain parked or located upon the paved or unpaved portion of any street or alley within the City for a period of time in excess of fourteen (14) days.  
(Ord. 826 § 1, 2003)

**8.32.200 Cesspools in city prohibited.**

All cesspools, open vaults and privies within the City are declared to be a nuisance, and subject to abatement. Each person, firm or association owning any lot, grounds or premises within the City upon which there are any cesspools, open vaults or privies, is required to forthwith remove, fill up and abate the same, except in such cases where the City Engineer, for good cause shown, shall grant temporary permission to maintain and use the same. (Ord. 826 § 1, 2003)

**8.32.210 Failure to provide evidence of identity.**

A person who fails or refuses to provide evidence of his identity to a duly authorized agent of the city upon request, when such agent has reasonable cause to believe the person has committed a violation of this chapter, is guilty of a misdemeanor. Sufficient evidence of identity shall consist of a person's full legal name, residence address, and date of birth.  
(Ord. 826 § 1, 2003)

**8.32.220 Remedies not exclusive.**

Violations of this chapter are in addition to any other violation established by law, and this chapter shall not be interpreted as limiting the penalties, actions, or abatement procedures which may be taken by the city or other persons under existing laws, ordinances, or rules. (Ord. 826 § 1, 2003)

**8.32.230 Each day is a separate violation.**

Each day in which a violation of this chapter continues shall constitute a separate civil violation. (Ord. 826 § 1, 2003)

**8.32.240 Alternative enforcement measures.**

Nothing in this chapter shall preclude city employees from seeking voluntary compliance with the provisions of this chapter or from enforcing this chapter through notices of violation, warnings, or other informal devices designed to achieve compliance in the most efficient and effective manner under the circumstances. (Ord. 826 § 1, 2003)

**8.32.250 Violation – penalty.**

A. Any person who is found by the court to be in violation of any of the provisions of this chapter shall be deemed responsible for a civil violation, unless otherwise designated in this chapter.

B. Upon the court finding a person responsible for a civil violation of this chapter, the court shall impose a fine in an amount not less than twenty-five dollars (\$25.00) nor more than one thousand dollars (\$1,000.00) for each violation. (Ord. 826 § 1, 2003)

**8.32.260 Civil citation – authority to issue.**



The city manager, or his designee, shall appoint code enforcement officers as employees of the public works department. Any code enforcement officer and/or any city police officer shall be empowered to issue civil citations and commence proceedings before a judge of the municipal court for any violation of this chapter. (Ord. 826 § 1, 2003)

#### **8.32.265 Rights of entry.**

The code enforcement officer shall be and is hereby authorized to enter into or upon any premises within the corporate limits of the city for the purpose of making necessary inspections and issuing notices, instructions or citations for any and all violations of the provisions of this chapter. (Ord. 826 § 1, 2003)

#### **8.32.270 Habitual offender.**

A. A person who commits a violation of this chapter after previously having been found responsible for committing three or more civil violations of this chapter within a twenty-four (24) month period, whether by admission, by payment of the fine, by default, or by judgment after hearing, shall be guilty of a class one misdemeanor.

B. For purposes of calculating the twenty-Four (24) month period under this section, the dates of the commission of the offenses are the determining factor.

C. Upon conviction of a person of a violation of this chapter, the court may impose a sentence of incarceration not to exceed six months in jail or a fine not to exceed two thousand five hundred dollars, exclusive of penalty assessments prescribed by law, or both. The court shall order a person who has been convicted of this section to pay a fine of not less than five hundred dollars (\$500.00) for

each count upon which a conviction has been obtained.

D. Every action or proceeding under this section shall be commenced and prosecuted in accordance with the laws of the State of Arizona relating to criminal misdemeanors and the Arizona Rules of Criminal Procedure. (Ord. 826 § 1, 2003)

### **Article II. Abatement**

#### **8.32.280 Definitions.**

“Abatement” means the removal, stoppage, prostration, or destruction of that which causes or constitutes a nuisance, whether by breaking or pulling it down, or otherwise destroying, or effacing it.

“Emergency abatement” means abatement of the nuisance by the city, or a contractor employed by the city, by removal, repair, or other acts without notice to the owner, agent, or occupant of the property, except for the notice required by this chapter.

“Owner” means the owner of record based on the county assessor’s record or any person with legal, financial or equitable interest in the property on which the alleged public nuisance exists at the time of the violation.

“Property” means any real property, premises, structure or location on which a public nuisance is alleged to exist. (Ord. 826 § 1, 2003)

#### **8.32.290 Abatement.**

As an additional remedy, or an alternative to a civil or criminal complaint, the city shall compel any persons with an interest in the property or agents of such persons to abate any violations of this chapter. Such abatement shall proceed independently of any civil or criminal

violation filed pursuant to this chapter. (Ord. 826 § 1, 2003)

#### **8.32.300 Emergency abatement.**

A. Whenever a complaint is made to the department of public works of the existence of a public nuisance, as defined in section 8.32.030, the department of public works shall promptly cause to be inspected the property on which it is alleged that such public nuisance exists. Should the city manager, upon recommendation of the department of public works, find that a public nuisance exists, and that the public health, safety or welfare may be in immediate danger, then emergency abatement procedures shall be implemented and the nuisance shall be removed or abated. The building inspector shall be notified if the public nuisance involves a building that appears structurally unsafe. The building inspector, upon being notified, shall cause the building on which it is alleged such public nuisance exists to be inspected and submit a written report of such inspection and the findings to the director of the department of public works.

B. When emergency abatement is authorized, notice to the owner, agent or occupant of the property is not required. If such emergency situation presents an imminent hazard to life or public safety, the city may immediately act to correct or abate the emergency. Following the emergency abatement, the department of public works shall cause to be posted on the property liable for the abatement a notice describing the action taken to abate the nuisance.

C. The city may issue a notice to abate directing the owner, occupant, operator, or agent to take such action as is appropriate to correct or abate the emergency. In the event

the city is unable to contact the owner, occupant, operator, agent or responsible party, it in no way effects the city's right to correct or abate the emergency. Upon receiving notice to abate emergency, the owner, occupant, operator, agent or responsible party shall be granted a hearing before the hearing officer on the matter within seven (7) days of a written request, but such appeal shall in no case shall stay the abatement or correction of such emergency. (Ord. 826 § 1, 2003)

#### **8.32.310 Abatement in other cases.**

A. If, after inspecting the property on which the nuisance is reported, the department of public works declares the existence of a public nuisance, but the nature thereof is not such as to require the emergency abatement of such nuisance, then, regular abatement procedures shall be followed. Photographs and reports of the findings and inspections shall be made and filed with the director of the department of public works.

B. The director of the department of public works, or his designee, shall determine the individual, firm or corporation who, from the records in the county recorder's office, appears to be the titled owner of the aforesaid property and immediately cause a written notice to be served on such individual, firm or corporation by personal service or by leaving a copy of the notice at the usual place of residence or business of such owner, or address of such owner shown in the recorder's records, or by copy mailed to such owner at such place or address by United States certified mail return receipt. If service of such written notice is unable to be perfected by any of the methods described above, the department of public works shall cause a copy of the aforesaid notice to be published in a newspaper of general

circulation in the city, once a week for two consecutive weeks, and shall further cause a copy of the aforesaid notice to be left with the individual, if any, in possession of such property on which it is alleged such public nuisance exists, or if there is no individual in possession thereof, the department of public works shall cause a copy of the notice to be posted at such structure, location or premises. The department of public works shall also determine from the recorder's office who the lienholder of the property, if any, as documented therein, is and cause a written notice to be served on such lienholder by United States mail return receipt.

C. The aforesaid notice to the owner, and lienholder, if any, of the property shall state clearly and concisely the findings of the department of public works with respect to the existence of a public nuisance. The notice shall further state that unless the owner thereof shall cause the abatement of the public nuisance, pursuant to the orders contained in the department of public works notice, the public nuisance shall be abated by the city at the expense of the owner.

D. Any person who is the record owner of the premises, location or structure at the time an order pursuant to this chapter is issued and served upon him, shall be responsible for complying with that order, and liable for any costs incurred by the city therewith, notwithstanding the fact that he conveys his interests in the property to another after such order was issued and served.

E. It shall not be a defense to the determination that a public nuisance exists that the property is boarded up or otherwise enclosed.  
(Ord. 826 § 1, 2003)

#### **8.32.315 Abatement notice.**

A. The city shall give reasonable written notice to abate any violation of this chapter to all persons with an interest in the property or agents of such persons.

B. Notice shall contain:

1. The legal description of the property;
2. The cost of such removal to the city if notified persons do not comply;
3. A date for compliance which shall not be less than thirty (30) days after the date notice was given;
4. Identification of the property in violation by street address if it exists; and
5. A statement of the violation(s) in sufficient detail to allow a reasonable person to identify and correct them.

C. Said written notice shall be either personally served, mailed by certified mail at their last known address or the address to which the tax bill for the subject property was last sent; or served in accordance with the Arizona Rules of Civil Procedure.

D. The city may record the notice in the county recorder's office. If such notice is recorded and compliance with the notice is subsequently satisfied, the city shall record a release of the notice.  
(Ord. 826 § 1, 2003)

#### **8.32.320 Abatement by owner.**

A. Within thirty (30) days after the posting and mailing of a notice to abate a nuisance, the owner, agent of the owner, or individual in possession of the affected property shall remove and abate such nuisance or show that no nuisance in fact exists. Such showing shall be made by filing a written statement that no nuisance exists. The statement shall be filed with the department of public works.

B. The department of public works, upon

written application by the owner within the thirty (30) day period after the notice has been served, may grant in writing additional time for the owner to effect the abatement of the public nuisance, provided that such extension is limited to a specific time period.  
(Ord. 826 § 1, 2003)

**8.32.330 City abatement upon failure to abate by person with interest in property.**

A. Upon failure of any notified person to abate a public nuisance within compliance time set in the written notice, the city may remove, abate, enjoin or cause removal of the violation.

B. Removal, abatement, or the acquisition of an injunction may be accomplished, at the sole discretion of the city, by city staff or an independent contractor.

C. The city manager, or his authorized representative, shall prepare a verified statement and account of the actual cost of abatement action, legal fees, additional inspection and other incidental connected costs.

D. The amount in the verified statement and account is declared as an assessment upon the lot or tract of land on which the violation occurred. Said assessment may be collected at the same time and in the same manner as other city assessments are collected.

E. A copy of the statement and account shall be personally delivered; sent by certified mail, return receipt requested; or served in accordance with the Arizona Rules of Civil Procedure to all persons with an interest in the property and/or their agents.

F. The assessment shall be recorded in the county recorder's office and from the date of its recording shall be a lien on the lot or tract of land and the several amounts assessed against the lot or tract of land until paid.

G. Any assessment lien recorded pursuant to this chapter after July 15, 1996, shall be prior and superior to all other liens, obligations, mortgages or other encumbrances, except liens for general taxes.

(Ord. 826 § 1, 2003)

**8.32.335 Satisfaction of assessment for abatement.**

A. A sale of the property to satisfy an assessment obtained under the provisions of this section shall be made upon judgment of foreclosure and order of sale.

B. The city may institute an action to enforce the lien in a competent court of the county at any time after the recording of the assessment, but failure to enforce the lien by such action shall not affect its validity.

C. The recorded assessment shall be prima facie evidence of the truth of all matters recited therein and of the regularity of all proceedings prior to the recording thereof.

D. A prior assessment or lien for the purposes provided in this section shall not be a bar to a subsequent assessment or assessments, or lien or liens, for such purposes, and any number of assessments or liens on the same lot or tract of land may be enforced in the same action.

(Ord. 826 § 1, 2003)

**8.32.340 Assessments run with the land and due in equal payments with interest.**

A. Assessments that are imposed under Chapter 8.32 run against the property until paid and are due and payable in equal annual installments as set for in ARS 9-499(E) or any subsequent replacement state statutory provision thereof.

B. An assessment that is past due accrues

interest at the rate prescribed by ARS 44-1201 or any subsequent replacement state statutory provision thereof.  
(Ord. 826 § 1, 2003)

**8.32.350 Abatement is additional remedy for violations.**

In addition to any fine which may be imposed for a violation of any provision of this chapter, the person, firm or corporation shall be liable for all costs which may be assessed pursuant to sections of this chapter for the removal of the public nuisance. (Ord. 826 § 1, 2003)

**Article III:  
Appeals for Notice to  
Abate, Emergency Abatement  
Action or Assessment**

**8.32.360 Definitions.**

A. "Hearing officer" means any person named in subsection 8.24.350 (A) to hear appeals pursuant to this article.

B. "Appealing party" means the owner, occupant, lienholder, or other person with a property interest in the subject property.

C. "Appealable actions" means any notice to abate, emergency abatement action, or assessment unless the notice, action or assessment is ordered by a court.  
(Ord. 826 § 1, 2003)

**8.32.370 Procedure for appeals to the hearing officer.**

A. Any appealable actions can be appealed to the hearing officer by an appealing party.

B. An appealing party must file its request for an appeal within fifteen days of the service of the notice to abate, the date emergency

abatement action commenced, or the filing of the assessment, and must be filed with the city clerk's office.  
(Ord. 826 § 1, 2003)

**8.32.380 Failure to timely file deemed a waiver of appeal.**

Failure of a person entitled to appeal under this chapter to timely file an appeal accompanied with the appeal fee established below shall constitute a waiver of the right to a hearing of the complaint before the hearing officer. (Ord. 826 § 1, 2003)

**8.32.390 Contents of request for appeal and appeal fee.**

A. The request for appeal shall set forth, in writing, the person's reasons for believing they are not in violation of the chapter or that the assessment is excessive.

B. The appealing party shall accompany the written appeal with an appeal fee of twenty-five dollars (\$25.00). The city clerk shall deposit the appeal fee in the general fund of the city.

C. In case of financial hardship based upon a sworn affidavit, the city clerk may suspend the appeal fee until the decision on appeal is rendered. Said sworn affidavit must be filed with the city clerk's office no later than two business days prior to the end of the request for appeal time limit. The city clerk's office shall issue its determination on fee suspension no later than two business days after its receipt of the affidavit.  
(Ord. 826 § 1, 2003)

**8.32.400 Matters on appeal.**

A. Any person may appeal an appealable action to the hearing officer:  
1. When it is claimed the

property or building subject to the notice is not in violation of the ordinance;

2. When it is claimed the notice provisions of chapter 8.32 were not properly followed; or

3. When it is claimed that the statement of costs for correcting or abating the violation is excessive.

(Ord. 826 § 1, 2003)

#### **8.32.410 Procedure on appeal.**

A. The city clerk's office shall set a date for hearing on appeal within (30) thirty days of the receipt of request for appeal by the city clerk's office.

B. The parties may, if they choose, be represented by an attorney.

C. The appealing party has the burden of proof to sustain a ground for appeal as enumerated in Section 8.32.400. The appealing party must proceed first in the presentation of evidence and present admissible evidence to support its appeal. The appealing party shall have no more than one (1) hour to present his case.

D. Both the appealing party and the city's representative will be permitted to cross-examine witness testimony, present evidentiary exhibits and to testify in person.

E. At the end of the appealing party's presentation of evidence, the city may ask that the hearing officer rule that he/she finds:

1. That the appealing party did not sustain its burden of proof of an appealable ground as set forth in Section 8.32.400; and

2. Denying the appealing party's relief.

F. If the hearing officer grants the city's request, it shall terminate the proceeding and issue such a decision in writing. If the hearing officer denies the city's request, the city may

present admissible evidence on behalf of the city in rebuttal. If the city chooses to present evidence in rebuttal, it will be allowed no more than one (1) hour to do so.

(Ord. 826 § 1, 2003)

#### **8.32.420 Determination of hearing officer.**

A. The hearing officer may amend or modify a notice to abate or extend the time for compliance of a notice to abate.

B. The hearing officer shall have the discretion to reduce or cancel a proposed assessment for abating a nuisance, in whole or in part, if, in the course of the hearing, the hearing officer finds that any of the following did not conform to the provisions of this chapter:

1. The notice to remove the nuisance;

2. The work performed in abating the nuisance; or

3. The computation of costs of the assessment for abating the nuisance.

C. The determination of the hearing officer is a final administrative decision and is not appealable to the city council.

(Ord. 826 § 1, 2003)

#### **8.32.430 Stay of order during appeal to hearing officer.**

Except for orders to vacate based on, or violations eligible for, emergency abatement action, the timely filing of an appeal shall stay enforcement of a notice to abate or assessment until the appeal is finally determined by the hearing officer. (Ord. 826 § 1, 2003)

#### **8.32.440 Personal liability of owner.**

The person who is the owner of the property at the time at which the notice required under

section 8.32.315 of this chapter is posted shall be personally liable for the amount of the assessment including all interest, civil penalties, and other charges. (Ord. 826 § 1, 2003)

## **Chapter 8.36**

### **SMOKING IN PUBLIC PLACES AND WORKPLACES**

#### **Sections:**

- 8.36.010 Definitions.**
- 8.36.020 Prohibition of smoking in certain public places.**
- 8.36.030 Regulation of smoking in restaurants.**
- 8.36.040 Regulation of smoking in the workplace.**
- 8.36.050 Smoking-optional areas.**
- 8.36.060 Compliance and responsibility.**
- 8.36.070 Violation—Penalty.**

#### **8.36.010 Definitions.**

The following definitions shall apply to the interpretation and enforcement of this chapter unless the context clearly indicates that a different meaning is intended.

“Bar” means an area devoted to the serving of alcoholic beverages to patrons for consumption on the premises, and in which the serving of food is only incidental to the consumption of such beverages.

“Business” means any establishment where goods or services are sold or where professional services are delivered.

“Child care facility” means any licensed nursery, day care center, preschool or other facility providing care for children. A private

residence is not a child care facility except during those hours and in those portions being used as a business for the provision of care for children.

“City” means the city of Douglas.

“Person” means every natural person, firm, association, organization, partnership, business trust, corporation, company, or other entity.

“Public place” means any enclosed area to which the public is invited or permitted, not including the offices or work areas not entered by the public in the normal course of business or in the normal public use of the premises. A private residence is not a public place.

“Restaurant” means any coffee shop, cafeteria, enclosed sandwich stand, enclosed taco stand, soda fountain, boardinghouse, club or other inside eating establishment which gives, sells or offers to sell food to the public, guests or employees, as well as kitchens in which food is prepared on the premises for serving elsewhere, including catering facilities. However, the term “restaurant” shall not include a “bar” as defined herein.

“Retail tobacco store” means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.

“Service line” means any indoor line at which one or more persons wait for or receive service of any kind, whether or not such service involves the exchange of money.

“Smoking” means the act of inhaling, exhaling or burning any tobacco product, or carrying any lighted cigar, cigarette or other combustible tobacco

“Sports arena” means any stadium, sports pavilion, gymnasium, health spa, swimming pool, roller or ice rink, bowling alley and other similar place where members of the general public assemble either to engage in physical



exercise, participate in athletic competition or witness sports events.

“Workplace” means any enclosed area under the control of a public or private employer which employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges and rest rooms, employee cafeterias, conference rooms and hallways. A private residence is not a “workplace” unless it is used as a child care facility or health care facility, and then, only during those hours and in those areas in which it is so used. (Ord. 751 § 1, 1999)

#### **8.36.020 Prohibition of smoking in certain public places.**

Except as otherwise provided herein, smoking shall be prohibited in the following places:

- A. Public elevators;
- B. Public areas of museums, libraries and galleries;
- C. Public forms of transportation, including, but not limited to, buses, vans and taxicabs;
- D. Public restrooms;
- E. Public areas in retail stores;
- F. Service lines.
- G. Theaters, movie houses, concert facilities, or other facilities used for recitals, plays, ballets, performances, bingo games, or exhibitions, whenever open to the public, except smoking which is part of a stage performance. Notwithstanding this provision, where seating is provided in an outdoor facility, no more than fifty percent of the seats of the facility may be designated as smoking seats provided that the smoking area is segregated from the nonsmoking area in such a way as to

minimize the exposure of smokers to secondhand smoke;

H. Indoor sports arenas, and convention halls, except that in privately owned and operated indoor sports arenas no more than fifty percent of the total seats may be designated as a smoking area provided that the smoking area is segregated from the nonsmoking area in such a way as to minimize the exposure of smokers to secondhand smoke;

I. Child care facilities;

J. Waiting rooms, sleeping rooms or public hallways of private or public health care facilities, including, but not limited to, hospitals, clinics, physical therapy, mental health, drug and alcohol treatment and doctors’ and dentists’ offices, provided, however, that health facilities may provide separate waiting rooms and bed spaces for smokers, as long as such rooms and spaces are clearly marked and do not constitute more than one half of the total rooms and spaces in the facility and as long as the existence of these smoking rooms does not expose nonsmokers to secondhand smoke;

K. Lobbies, hallways, meeting rooms and other common areas in hotels, motels, apartment buildings, condominiums, senior citizen homes, nursing homes and other multiple-unit facilities, except that lobbies larger than one thousand five hundred square feet in size shall be exempt provided the lobby ceilings are in excess of fifteen feet high;

L. Lobbies, hallways and other common areas in multiple-unit commercial facilities;

M. Classrooms and public areas of schools or other educational institutions providing academic classroom instruction, technical training or instruction in dancing, art, music or other cultural activities;

N. Hotel and motel rooms, provided, however, that each hotel or motel may

designate not more than fifty percent of their hotel or motel rooms as smoking rooms. The hotel or motel rooms designated as smoking will have signs posted indicating that smoking is allowed. The non-smoking rooms will have signs indicating that smoking is prohibited, and ashtrays will be removed from those rooms;

O. Notwithstanding any other provisions in this section, any owner, operator, manager or other person who controls any establishment or facility may declare that entire establishment or facility to be a nonsmoking establishment. In that case, no smoking shall be permitted anywhere in the establishment. (Ord. 751 § 2, 1999)

#### **8.36.030 Regulation of smoking in restaurants.**

A. The owner or manager of a restaurant may designate the entire restaurant as a nonsmoking facility.

B. The owner or manager of a restaurant may designate certain areas of the restaurant as smoking areas, provided that:

1. At least fifty percent of the indoor dining area is designated as a nonsmoking area; and
2. The nonsmoking area is kept free from smoke.

C. The provision of this section shall not apply to any portion of a restaurant which is utilized as a bar, or to any rooms in a restaurant while they are being used for private functions. (Ord. 751 § 3, 1999)

#### **8.36.040 Regulation of smoking in the workplace.**

A. Any employer having an enclosed place of employment located within the city shall adopt, implement, maintain, post and make

known to its employees, a written smoking policy which shall contain, at a minimum, the following provisions:

1. Prohibitions on smoking in conference and meeting rooms, restrooms, and other common areas.

2. Provision and maintenance of a contiguous nonsmoking area of not less than fifty percent of the seating capacity and floor space in cafeterias, lunchrooms and employee lounges.

3. Any nonsmoking employee may object to his or her employer about smoke in his or her workplace. In that event, using available means of ventilation or separation or partition of office space, the employer shall use best efforts to reach a reasonable accommodation of the nonsmoking employee's needs. However, an employer is not required by this chapter to make any expenditures or structural changes to accommodate the preferences of nonsmoking or smoking employees.

4. If an accommodation which is reasonably satisfactory to all nonsmoking employees cannot be reached in any given workplace, the preferences of the nonsmoking employees shall prevail and the employer shall prohibit smoking in that workplace. Where the employer prohibits smoking in a workplace, the area in which smoking is prohibited shall be clearly marked with signs.

B. Notwithstanding any other provision in this chapter, every employer shall have the right to designate any workplace or portion thereof as a nonsmoking area. If an employer fails to adopt, implement and maintain a written smoking policy, smoking shall be prohibited on the entire premises.

C. No employee shall be terminated or subject to disciplinary action as a result of

making a complaint to an employer or the city about smoking in the workplace.

1. Any person claiming to be a victim of an unlawful termination or discipline as described in this section must file a written complaint with the city police department within sixty days from the alleged unlawful practice.

2. The victim of any unlawful termination or discipline as described in this section may, within thirty days of entry of judgment of a violation of this section, apply to the employer for reinstatement of the employee's former position and/or payment of any wages and benefits that would have accrued were it not for the wrongful termination or discipline. The employer shall reinstate the victim and pay the accrued wages and benefits within ten days of such application. Failure to comply with this subsection is a violation of this chapter, and each day of noncompliance is a separate offense. (Ord. 751 § 4, 1999; Ord. 810 § 3, 2002)

#### **8.36.050 Smoking-optional areas.**

This chapter is not intended to regulate smoking in the following places and under the following conditions:

A. Private residences, except when used as a child care or health care facility;

B. Bars. Provided, however, that the owner or manager of a bar may designate one area of the bar as a nonsmoking area and may designate the entire bar as a nonsmoking facility;

C. Retail tobacco stores;

D. Private clubs;

E. Hotel, motel and all other public and private conference and meeting rooms while being used exclusively for private functions;

F. A private, enclosed office workplace occupied exclusively by smokers, even though such an office workplace may be visited by nonsmokers;

G. Any area exterior to the building in which a regulated establishment or facility is located.

H. Outdoor Smoking Arenas. However, the owner, sponsor or manager may designate all or part of the arena as a nonsmoking area. (Ord. 751 § 5, 1999)

#### **8.36.060 Compliance and responsibility.**

A. Any person or employer who owns, operates, manages or otherwise controls the use of any premises subject to this chapter shall properly post and maintain clear and conspicuous signs which designate smoking or no smoking areas, and shall not allow service to any person while such person is smoking in a no smoking area.

B. The city shall provide each business license applicant with a copy of the ordinance codified in this chapter. However, the city's failure to do so shall not relieve the business from the provisions of this chapter.

C. No person shall intentionally deface or remove a no smoking sign required by this chapter unless replacing it with another no smoking sign. (Ord. 751 § 6, 1999)

#### **8.36.070 Violation—Penalty.**

Any person violating any provision of this chapter shall be subject to a fine of not less than twenty-five dollars nor more than five hundred dollars for each offense and a separate offense shall be deemed committed on each day during or on which a violation occurs. (Ord. 751 § 7, 1999)